FILE COPY

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1926

No. 61

STATE OF NEVADA AND THE PEOPLE OF THE STATE OF NEW YORK, PETITIONERS,

vs.

JOSEPH STACHER

ON WRIT OF CERTIORARI TO THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WHITE PINE

PETITION FOR CERTIORARI FILED MAY 3, 1926

CERTIORARI GRANTED JUNE 21, 1926

SUPREME COURT OF THE UNITED STATES

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ON PETITION FOR A WRIT OF CERTIORARI TO THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

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JUDD & DETWEILER (INC.), PRINTERS, WASHINGTON, D. C., APRIL 20, 1953.

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[fol. 1] [File endorsement omitted]

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

In the Matter of the Application of JOSEPH STACHER for a Writ of Habeas Corpus

PETITION FOR WRIT OF HABEAS CORPUS—Filed December 16, 1952

To: The Honorable HARRY M. WATSON, District Judge of the above-entitled Court.

The Petition of Joseph Stacher respectfully shows:

1. That the Petitioner is the applicant in the above-entitled matter.

2. That the said Joseph Stacher is imprisoned and restrained of his liberty in the City of Ely, County of White Pine, State of Nevada, by T. J. McLaughlin, Sheriff of said County of White Pine, State of Nevada.

3. That your Petitioner was arrested, detained and deprived of his liberty on the 16th day of December, 1952, by virtue of an executive warrant issued by the Governor of the State of Nevada, granted on a requisition from the Governor of the State of New York, reciting that your Petitioner had been indicated by a Grand Jury in the State of New York, and charging your Petitioner with the commission on the crimes of violating Sections 664, 665, 881, 889, 580, 970 and 973 of the Penal laws of the said State of New York, and that your Petitioner was a fugitive from justice from the State of New York.

4. That the imprisonment and restraint of the said Joseph Stacher, as aforesaid, is illegal and unlawful, and the illegality and unlawfulness of said restraint, imprisonment and detention consists as follows:

(A). That the warrant under which your Petitioner is held alleges that the crimes with which Petitioner is charged were committed in the County of Saratoga, State of New

York, from about July 11, 1928, up to, and including the date of the indictment, to-wit, the 8th day of September, 1952; that neither the requisition from the Governor of the [fol. 2] State of New York, nor the executive warrant issued by the Governor of the State of Nevada alleges, nor does it appear therefrom that your Petitioner was personally, bodily or corporeally present within the State of New York at the time the alleged crimes and overt acts were alleged to have been committed; that the Governor of the State of Nevada was without jurisdiction to issue his warrant in that it did not affirmatively appear before him that your Petitioner was a fugitive from justice from the State of New York and had fled therefrom; that it did not appear that there was any evidence that your Petitioner was personally, bodily, or corporeally present in the State of New York when the crimes and the overt acts were alleged to have been committed; that by reason of the above matters and things the executive warrant issued by the Governor of the State of Nevada is invalid and void in that the requirements of Article IV, Section 2 of the Constitution of the United States was not complied with, therefore the said Governor of the State of Nevada was wholly without jurisdiction to act, or issue said executive warrant.

(B) That the indictment upon which the aforesaid requisition is based is insufficient at law in that it does not allege every essential circumstance and element of the crimes sought to be charged; that said indictment is further insufficient at law in that it fails to set forth with such degree of certainty sufficient essential elements, material facts and circumstances embraced in the definition of the said offenses to show how, when, and in what manner the said Petitioner committed the said crimes; that said indictment is further insufficient in that it does not charge a crime or crimes under the authority of Article IV, Section 2, of the Constitution of the United States.

(C) That your Petitioner is unlawfully imprisoned and restrained of his liberty, as aforesaid, by reason of the fact that he is not a fugitive from the State of New York (and that he was not bodily, physically, or corporeally present in the State of New York at the time said crimes are alleged to have been committed), nor did he afterward flee from justice

from the State of New York, and by reason thereof is not a subject of rendition under the authority of Article IV, Section 2, of the Constitution of the United States.

(D) That the requisition of the Governor of the State of New York, and the executive warrant of the Governor of the State of Nevada are based upon an indictment showing that the alleged crimes were committed in years prior to 1948, and that the State of New York failed and refused to bring any criminal action against this defendant until September 8, 1952.

(E) That the said proposed rendition of this defendant is not brought in good faith by the authorities of the demanding state, to-wit, New York, and is not brought by said authorities for the object and purpose of punishment of the Petitioner for the crime or crimes alleged to have been committed, but to the contrary, is brought by the said authorities of the damanding state, to-wit, New York, for ulterior and private motives and political purposes.

(F) That the crimes of which this Petitioner stands charged in the indictment are barred by the statutes of limitations under the laws of the State of New York.

[fol. 3] Wherefore, Petitioner prays that a Writ of Habeas Corpus may issue directed to the said T. J. McLaughlin, commanding him that he have the body of the said Joseph Stacher, by him imprisoned and detained, together with the time and cause of imprisonment and detention before the said Court, to do and receive what shall then and there be considered concerning the said Joseph Stacher in pursuance of the statutes in such cases made and provided.

/s/ Harry E. Claiborne, /s/ Gray & Horton, /s/ By C. E. Horton, Attorneys for Petitioner, /s/ Joseph Stacher, Petitioner.

Duly sworn to by Joseph Stacher. Jurat omitted in printing.

[fol. 4] [File endorsement omitted]

IN THE SEVENTH JUDICIAL DISTRICT COURT OF NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

[File endorsement omitted.]

ORDER FOR WRIT OF HABEAS CORPUS TO ISSUE—December 16, 1952

Upon reading and filing the Petition of Joseph Stacher, duly signed and verified by him, whereby it appears that he is illegally imprisoned and restrained of his liberty by Thos. J. McLaughlin, Sheriff of White Pine County, State of Nevada, and stating therein the alleged illegality consists from which it appears that a Writ of Habeas Corpus ought to issue.

It is ordered that a Writ of Habeas Corpus issue out of and under the seal of the Seventh Judicial District Court of the State of Nevada in and for the County of White Pine, directed to the said Thos. J. McLaughlin, Sheriff, as aforesaid, commanding him to have the body of the said Joseph Stacher before me in the Courtroom of the said Court at the County of White Pine on the 22nd day of December, 1952, at 9 o'clock A. M.; of that day, to do and receive what shall then and there be considered concerning the said Petitioner, Joseph Stacher, together with the time and cause of his detention and that he have then and there the said Writ of Habeas Corpus.

It is further ordered that the said Joseph Stacher be held to bail for his appearance at the time and place as aforesaid in the penal sum of $10,000, that upon such bail being forthwith entered into, in conformity to this Order and the provisions of law, that the said Joseph Stacher be discharged, and in default of such bail that he be remanded to the custody of said Sehriff.

Dated this 16th day of December, 1952.

/s/ Harry M. Watson, District Judge.

[fol. 5] [File endorsement omitted]

EXHIBIT "A"

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

In the Matter of the Application of JOSEPH STACHER for a Writ of Habeas Corpus

PETITION FOR A WRIT OF HABEAS CORPUS—Filed November 21, 1952

To: The Honorable A. S. HENDERSON, District Judge of the above-entitled Court.

The Petition of Joseph Stacher respectfully shows:

1. That the Petitioner is the applicant in the above-entitled matter.

2. That the said Joseph Stacher is imprisoned and restrained of his liberty in the City of Las Vegas, County of Clark, State of Nevada, by Glen Jones, Sheriff of said County of Clark, State of Nevada.

3. That your Petitioner was arrested, detained and deprived of his liberty on the 21st day of November, 1952, by virtue of an executive warrant issued by the Governor of the State of Nevada, granted on a requisition from the Governor of the State of New York, reciting that your Petitioner had been indicted by a Grand Jury in the State of New York, and charging your Petitioner with the commission of the crimes of violating Sections 664, 665, 881, 889, 580, 970, and 973 of the Penal laws of the said State of New York, and that your Petitioner was a fugitive from justice from the State of New York.

4. That the imprisonment and restraint of the said Joseph Stacher, as aforesaid, is illegal and unlawful, and the illegality and unlawfulness of said restraint, imprisonment and detention consist as follows:

(A) That the warrant under which your Petitioner is held alleges that the crimes with which Petitioner is charged were committed in the County of Saratoga, State of New

[fol. 6] York, from about July 11, 1928, up to, and including the date of the indictment, to-wit, the 8th day of September, 1952; that neither the requisition from the Governor of the State of New York, nor the executive warrant issued by the Governor of the State of Nevada alleges, nor does it appear therefrom that your Petitioner was personally, bodily or corporeally present within the State of New York at the time the alleged crimes and overt acts were alleged to have been committed; that the Governor of the State of Nevada was without jurisdiction to issue his warrant in that it did not affirmatively appear before him that your Petitioner was a fugitive from justice from the State of New York and had fled therefrom; that it did not appear that there was any evidence that your Petitioner was personally, bodily, or corporeally present in the State of New York when the crimes and the overt acts were alleged to have been committed; that by reason of the above matters and things the executive warrant issued by the Governor of the State of Nevada is invalid and void in that the requuirements of Article IV, Section 2 of the Constitution of the United States was not complied with, therefore the said Governor of the State of Nevada was wholly without jurisdiction to act, or issue said executive warrant.

(B) That the indictment upon which the aforesaid requisition is based is insufficient at law in that it does not allege every substantial circumstance and element of the crimes sought to be charged; that said indictment is further insufficient, at law in that it fails to set forth with such degree of certainty sufficient essential elements, material facts and circumstances, embraced in the definition of the said offenses to show how, when, and in what manner the said Petitioner committed the said crimes; that said indictment is further insufficient in that it does not charge a crime or crimes under the authority of Article IV, Section 2, of the Constitution of the United States.

(C) That your Petitioner is unlawfully imprisoned and restrained of his liberty, as aforesaid, by reason of the fact that he is not a fugitive from the State of New York, and that he was not bodily, physically, or corporeally present in the State of New York at the time said crimes are alleged to have been committed, nor did he afterward flee from

justice from the State of New York, and by reason thereof is not a subject of rendition under the authority of Article IV, Section 2, of the Constitution of the United States.

(D) That the requisition of the Governor of the State of New York, and the executive Warrant of the Governor of the State of Nevada are based upon an indictment showing that the alleged crimes were committed in years prior to 1948, and that the State of New York failed and refused to bring any criminal action against this defendant until September 8, 1952.

(E) That the said proposed rendition of this defendant is not brought in good faith by the authorities of the demanding state, to-wit, New York, and is not brought by said authorities for the object and purpose of punishment of the Petitioner for the crime or crimes alleged to have been committed, but to the contrary, is brought by the said authorities of the demanding state, to-wit, New York, for ulterior and private motives and political purposes.

(F) That the crimes of which this Petitioner stands [fol. 7] charged in the indictment are barred by the statutes of limitations under the laws of the State of New York.

Wherefore, Petitioner prays that a Writ of Habeas Corpus may issue directed to the said Glen Jones, commanding him that he have the body of the said Joseph Stacher, by him imprisoned and detained, together with the time and cause of imprisonment and detention before the said Court, to do and receive what shall then and there be considered concerning the said Joseph Stacher in pursuance of the statutes in such cases made and provided.

/s/ Harry E. Claiborne, Attorney for Petitioner,
/s/ Joseph Stacher, Petitioner.

Duly sworn to by Joseph Stacher. Jurat omitted in printing.

[fol. 8] [File endorsement omitted]

IN THE EIGHTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF CLARK

[Title omitted]

ORDER FOR WRIT OF HABEAS CORPUS TO ISSUE—Filed November 21, 1952

Upon reading and filing the Petition of Joseph Stacher, duly signed and verified by him, whereby it appears that he is illegally imprisoned and restrained of his liberty by Glen Jones, Sheriff of Clark County, State of Nevada, and stating therein the alleged illegality consists from which it appears that a Writ of Habeas Corpus ought to issue.

It is ordered that a Writ of Habeas Corpus issue out of and under the seal of the Eighth Judicial District Court of the State of Nevada in and for the County of Clark, directed to the said Glen Jones, Sheriff, as aforesaid, commanding him to have the body of the said Joseph Stacher before me in the Courtroom of the said Court at the County of Clark on the 28th day of November, 1952, at 2:30 o'clock P. M.; of that day, to do and receive what shall then and there be considered concerning the said Petitioner, Joseph Stacher, together with the time and cause of his detention and that he have then and there the said Writ of Habeas Corpus.

It is further ordered that the said Joseph Stacher be held to bail for his appearance at the time and place as aforesaid in the penal sum of $5000.00, that upon such bail being forthwith entered into, in conformity to this Order and the provisions of law, that the said Joseph Stacher be discharged, and in default of such bail that he be remanded to the custody of said Sheriff.

Dated this 21st day of November, 1952.

A. S. Henderson, District Judge.

[fol. 9] [File endorsement omitted]

IN THE DISTRICT COURT OF CLARK COUNTY

No. 59019

In the Matter of the Application of JOSEPH STACHER for a Writ of Habeas Corpus

ORDER FORFEITING BOND—November 28, 1952

This matter came on for hearing before the Court on Petition for Writ of Habeas Corpus. State of Nevada represented in Court by George Dickerson, Esquire, Deputy District Attorney in and for the County of Clark. Petitioner represented in Court by Harry E. Claiborne, Esquire. Mr. Dickerson requested that William Fischer, Deputy Attorney General of the State of New York be associated as counsel for the State. No objection and So Ordered.

At the request of Mr. Claiborne, court recessed at the hour of 2:45 P. M. for fifteen minutes.

Court reconvened at the hour of 3:05 P. M. with all present as of the opening session this date. Thereafter, it appearing that the Petitioner has failed to appear at the time set for the hearing on his Petition for Writ of Habeas Corpus, it is Ordered that his failure to appear be entered in the minutes of the Court and that the $5,000.00 bond be forfeited and these proceedings dismissed.

Approved: Frank McNamee, District Judge.

Attest: Frances Butterfield, Deputy Clerk.

[fols. 10-11] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 12] STATE OF NEVADA, EXECUTIVE DEPARTMENT

No. 6145

EXECUTIVE WARRANT—Filed January 12, 1953

/s/ F. D. Oldfield, Clerk, By /s/ John Hamlyn, Deputy.

Carson City, November 21, 1952.

Whereas, The Honorable Thomas E. Dewey, Governor of the State of New York, has issued his requisition, in the name and by the authority of the State of New York, and in virtue of the rights and privileges secured and guaranteed by the Constitution and laws of the United States, alleging that one Joseph Stacher, alias Doc Stacher, Doc Harris, Doc Rosen and Joe Rosen stands charged with the crime of Conspiracy, obtaining the signature of a person to a written instrument with intent to cheat and defraud and forgery in the third degree committed in the county of Saratoga, State of New York and the said requisition has attached thereto a certified copy of:

An indictment returned by the grand jury of the County of ——, State of ——; (or)

A- Indictment issued out of the Supreme Court of the County of Saratoga, State of New York, which said copy is certified by the said Governor to be full, true and authentic, charging the said Joseph Stacher with the abovenamed offense; and that the said Joseph Stacher has fled the said State of New York, and is a fugitive from the justice of said State, and is believed to be within the limits of the State of Nevada, and demanding and requiring that the said Joseph Stacher be delivered up to the justice of the State of New York, from which he has fled, and has appointed and constituted Frank A. Keane and/or James Cerino as the Agent of the State of New York, to receive and convey back the said fugitive;

Now, therefore, The State of Nevada to any Sheriff, Constable or Peace Officer within said State: You are hereby authorized and commanded to arrest, imprison and detain said Joseph Stacher wherever he may be found in the State of Nevada and to deliver him up to said Frank

A. Keane and/or James Cerino, Agent as aforesaid, to be conveyed back to the State of New York, from which he has so as aforesaid fled.

Witness my hand and the Seal of State, at Carson City, this 21st day of November, A. D. 1952.

Charles H. Russell, Governor of the State of Nevada,
By the Governor: John Koontz, Secretary of State.
(Seal.)

[fol. 13] In the Seventh Judicial District Court of the State of Nevada in and for the County of White Pine

Writ of Habeas Corpus—December 16, 1952

The People of the State of Nevada, to Thos. J. McLaughlin, Sheriff of the County of White Pine, Greeting:

Whereas, by an order of this Court made in the above proceedings on the 16th day of December, 1952, it was ordered that a Writ of Habeas Corpus be issued and directed to you.

Therefore, we command you, that you have the body of Joseph Stacher, by you imprisoned and detained, as it is averred, together with the time and cause of such imprisonment and detention, by whatsoever name said Joseph Stacher shall be called or charged, before Harry M. Watson, Judge of the said Court, County of White Pine, on the 22nd day of December, 1952, at 9:00 o'clock A. M., of that day, to do and receive what shall then and there be considered concerning the said Joseph Stacher: and have you then and there this Writ, with your return endorsed thereon or annexed thereto.

Witness this Honorable Harry M. Watson, Judge of the above-entitled Court, attested by my hand and the seal of said Court this 16th day of December, 1952.

By F. D. Oldfield.

[fol. 14] [File endorsement omitted]

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

[Title omitted]

RETURN TO WRIT OF HABEAS CORPUS—Filed January 12, 1953

Comes now Thomas J. McLaughlin, duly elected, qualified, and acting Sheriff of White Pine County, Nevada and in obedience to the writ of habeas corpus hereto annexed, I do hereby certify as follows:

I

On the 16th day of December, 1952, a person accompanied by his attorney C. E. Horton, appeared at the sheriff's office and said attorney informed my deputy on duty Mrs. Christine Russell, that said person wanted to place himself in the custody of the Sheriff of White Pine County because he was wanted in New York; that my said deputy informed said person and said attorney that she would place said person in jail; that said attorney informed said deputy to "wait a minute"; that said attorney then left the sheriff's office and shortly thereafter returned with a Write of Habeas Corpus for the person of Joseph Stacher; that said deputy then took the said Joseph Stacher into her custody.

[fol. 15] II

On the 16th day of December, 1952, said Joseph Stacher, posted $10,000 bail pursuant of an order of the above entitled Court.

III

That said Joseph Stacher is still at liberty on said bail.

Dated this 12 day of January, 1953.

T. J. McLaughlin, Sheriff of White Pine County, State of Nevada.

[fol. 16] IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

[Title omitted]

RESPONSE TO PETITION

Comes now, George Dickerson, as Special Assistant Attorney General of the State of Nevada and for the people of the State of Nevada, and responds and answers to the petition of petitioner above named in behalf of Thomas J. McLaughlin, Sheriff of White Pine County, Nevada who has not sufficient knowledge to answer the same, and as such denies, admits, and alleges, as follows:

I

Admits all allegations in Paragraph 1 of said Petition.

II

Denies all allegations in Paragraph 2 of said Petition.

III

In response to Paragraph 3 of said Petition your respondent denies that the petitioner was arrested, detained and deprived of his liberty of the 16th day of December, 1952 but admits that an executive warrant was issued by the Governor of the State of Nevada, granted on a requisition from the Governor of the State of New York, reciting that the Petitioner had been indicted by a Grand Jury in the State of New York, and charging the Petitioner with the commission of the crimes of violating Sections 664, 665, 881, 889, 580, 970, and 973 of the Penal laws of the said State of New York, and that the Petitioner is a fugitive from justice from the State of New York.

[fol. 17] IV

Denies on information and belief all things and matters alleged in Paragraph 4 of said petition and all sub paragraphs thereunder.

For and as his first affirmative defense, respondent alleges as follows:

I

That the above entitled Court is without jurisdiction to hear this Writ.

II

That petitioner was arrested in Clark County, Nevada on the 21st day of November, 1952 under the same Governor's warrant that he now claims to be held under in White Pine County, Nevada.

For and as his second affirmative defense, respondent alleges as follows:

I

That the petitioner has not been arrested in White Pine County, Nevada, on the executive warrant issued by the Governor of the State of Nevada.

For and as his third affirmative defense, respondent alleges as follows:

I

That the exemplified requisition papers from the State of New York set out that certain crimes were committed in said State by petitioner, that he has been charged in New York State with the Commission of such crimes, that he has fled from New York State and is now within the State of Nevada.

II

That at the time of the commission of such crimes the petitioner was physically present in the State of New York. [fol. 18] For and as his fourth affirmative defense, respondent alleges as follows:

I

That the petition on file herein is frivolous for the reasons and upon the grounds heretofore alleged and for the additional reason that petitioner was accorded a fair and impartial hearing by the Governor of the State of Nevada wherein he asserted all his defenses to the issuance of an executive warrant.

For and as his fifth affirmative defense, respondent alleges as follows:

I

That the petition on file herein is frivolous for the reasons and upon the grounds heretofore alleged and for the additional reason that petitioner filed a like petition in Clark County, Nevada, in the Eight Judicial District Court of the State of Nevada, setting out the same allegations verbatim as are contained in the petition on file herein and a time was set for a fair, just and impartial hearing thereon and petitioner wilfully refused, failed and neglected to appear at said hearing.

For and as his sixth affirmative defense, respondent alleges as follows:

I

That petitioner and petitioner's accountant testified before the Kefauver Crime Committee in the State of New Jersey in 1951 and said testimony places the petitioner in New York State at the time of the commission of some of the crimes contained in the exemplified requisition papers sent to the Governor of the State of Nevada by Thomas E. Dewey, Governor of the State of New York.

For and as his seventh affirmative defense, respondent alleges as follows:

[fol. 19] I

That it appears from Paragraph 3 of petitioner's Petition for Writ of Habeas Corpus that the requisitioning papers from New York State set out that petitioner has been indicted by a New York Grand Jury, and charged with the commission of numerous crimes and violation of seven separate penal laws of New York State and further that petitioner is a fugitive from justice from New York State.

II

It is admitted that these matters in Paragraph 3 are true, and petitioner having by his own Petition alleged that the New York requisitioning papers are in order and contain all the essential allegations required by law for the issuance

of an executive warrant, leaves only the question of identity of petitioner to be decided by this Court.

III

That the question of identity has been cleared up by petitioner himself by his verification of the said Petition wherein he alleges that he is Joseph Stacher, therefore on the face of his own Petition for Writ of Habeas Corpus he has pled himself out of Court.

Wherefore it is prayed that petitioners Writ be dismissed and he be remanded to the custody of Thomas J. McLaughlin, Sheriff of White Pine County, Nevada for delivery to duly appointed agents of the State of New York.

George Dickerson, Special Assistant Attorney General of the State of Nevada.

[fol. 20] [File endorsement omitted]

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR THE COUNTY OF WHITE PINE

[Title omitted]

TRAVERSE—Filed January 12, 1953

Comes now Joseph Stacher, Petitioner herein, and for traverse to the Return of the Writ of Habeas Corpus on file herein admits, denies and alleges as follows:

I

Answering Paragraph I of said Return, Petitioner alleges that on the 16th day of December, 1952, he, in company with C. E. Horton, Esq., one of his attorneys, appeared at the office of the Sheriff of White Pine County, State of Nevada; that at said time Mrs. Christine Russell, Deputy Sheriff of the County of White Pine, State of Nevada, was on duty; that at said time and place the said C. E. Horton introduced Deputy Sheriff Russell to Petitioner, at the same time informing the said Deputy that Mr. Stacher was wanted in the State of New York, that

they were endeavoring to extradite him; that he further stated that Petitioner had appeared at the Sheriff's Office for the purpose of surrendering himself and requested the said deputy to place Petitioner under arrest; that forthwith said Deputy Russell took Petitioner into her custody and announced to Mr. Horton in Petitioner's presence that [fol. 21] she would place him in jail; that at that time Mr. Horton informed Deputy Russell that forthwith the Petition for Writ of Habeas Corpus was being filed on behalf of Petitioner and stating that it would only be a few moments before the same was filed and asked Deputy Russell to retain Petitioner in her custody; that said Mr. Horton further stated that he would return in a few minutes; that shortly thereafter Mr. Horton returned and stated that he was ready to go into Court, whereupon, Deputy Russell took Petitioner, who was at that time and had at all times since his surrender been in the custody and under the restraint of the said Deputy Russell, into the Courtroom of the Seventh Judicial District Court of the City of Ely, County of White Pine, State of Nevada; that shortly thereafter the Bailiff convened Court with the Honorable Harry M. Watson presiding, immediately following which the hearing was held in regard to the issuance of Writ of Habeas Corpus as prayed for in the Petition therefor; that at all times during the hearing Petitioner was under the custody, control and restraint of the said Deputy Russell; that at the conclusion of the hearing the Honorable Harry M. Watson entered an order whereby the Writ of Habeas Corpus was issued and the further order that Peititioner furnish bail in the sum of Ten Thousand Dollars ($10,000.00) cash or in lieu thereof a property bond in the sum of Twenty Thousand Dollars ($20,000.00).

Answering further said Paragraph I of said Return, Petitioner admits as therein alleged that the said C. E. Horton "then left the Sheriff's office" after Petitioner was arrested and taken into the custody of the said Deputy Russell, but Petitioner denies the allegation therein contained that "shortly thereafter returned with a Writ of Habeas Corpus for the person of Joseph Stacher".

[fol. 22] Answering further said Paragraph I of said

Return, Petitioner alleges that a Writ of Habeas Corpus was issued subsequent to the taking of Petitioner to the above referred to District Court and at the conclusion of the hearing hereinabove referred to.

Answering further said Paragraph I of said Return, Petitioner denies that certain allegation- therein contained "that said Deputy then took the said Stacher into custoday".

II

Answering Paragraph III of said Return, Petitioner denies the same.

Answering further said Paragraph III of said Return, Petitioner alleges that his liberty is restrained by the bail heretofore by the Court ordered.

Harry E. Claiborne and Gray and Horton, By Harry E. Claiborne, Attorneys for Petitioner, Joseph Stacher, Petitioner.

Duly sworn to by Joseph Stacher. Jurat omitted in printing.

[fol. 23] APPLICATION FOR REQUISITION

In the Matter of An Application to the HONORABLE THOMAS E. DEWEY, Governor of the State of New York, for a Requisition Upon the Honorable Charles H. Russell, Governor of the State of Nevada, for the Return of Joseph Stacher (alias Doc Stacher, Doc Harris, Doc Rosen and Joe Rosen), a Fugitive from Justice

To: The Governor of the State of New York.

Sir:

Under the provisions of the Uniform Criminal Extradition Act of the Code of Criminal Procedure of the State of New York, and upon the affidavit of Paul W. Williams verified the 7th day of November, 1952, the affidavit of Joseph Folts, verified the 4th day of November, 1952, and the affidavit of Helen E. Tracy, verified the 5th day of November, 1952 and the exemplified copies of the indict-

ments and warrants thereto attached and made a part thereof, and in compliance with your rules in reference to applications for requisition on governors of other states, application is made for a requisition by the Governor of the State of New York upon the Governor of the State of Nevada for the return of Joseph Stacher, (alias Doc Stacher, Doc Harris, Doc Rosen and Joe Rosen), a fugitive from justice, who stands indicted in the County of Saratoga, State of New York, for crimes, and who, as appears from the annexed affidavit of Paul W. Williams, Special Assistant Attorney General of the State of New York, is a fugitive from the justice of this State, and is now in the said State of Nevada.

Nathaniel L. Goldstein, Attorney General of the State of New York, (signed) Paul W. Williams, By: Paul W. Williams, Special Assistant Attorney General in Charge of the Saratoga Investigation.

[fol. 24] In the Matter of An Application to the Honorable Thomas E. Dewey, Governor of the State of New York, for a Requisition Upon the Honorable Charles H. Russell, Governor of the State of Nevada, for the Return of Joseph Stacher (alias Doc Stacher, Doc Harris, Doc Rosen and Joe Rosen), a Fugitive from Justice

State of New York,
County of Saratoga, ss.:

Paul W. Williams, being duly sworn, deposes and says: Your deponent is a special Assistant Attorney General of the State of New York, and by designation of the Honorable Nathaniel L. Goldstein, Attorney General of the State of New York, is in active charge of an investigation into public corruption and crime in the County of Saratoga, State of New York. Said investigation was initiated by an executive order of the Governor of the State of New York, and dated April 2, 1951.

Your deponent makes this affidavit in support of an application for a requisition by the Governor of the State of New York upon the Governor of the State of Nevada

for the return of a fugitive from justice from the State of New York.

Your deponent does certify that the full name of the person for whom requisition is asked is Joseph Stacher (alias Doc Stacher, Doc Harris, Doc Rosen and Joe Rosen).

Your deponent does certify that in his opinion the ends of justice require that the said Joseph Stacher be brought to the State of New York for trial upon indictments now pending against him and that he be returned at public expense.

[fol. 25] Your deponent does certify that he believes he has sufficient evidence to secure a conviction of the fugitive.

Your deponent does certify that all the papers herein submitted in duplicate have been compared with each other and are in all respects exact counterparts.

On September 8, 1952, Joseph Stacher (alias Doc Stacher, Doc Harris and Doc Rosen) was duly indicted by the Grand Jury duly impanelled for the Extraordinary Special and Trial Term of the Supreme Court of the State of New York for the County of Saratoga and was charged with the Commission of the Crimes of Conspiracy, Obtaining the Signature of a Person to a Written Instrument With Intent to Cheat and Defraud and Forgery in the Third Degree. An exemplified copy of said indictment is attached hereto, marked Exhibit "A" and is made a part hereof.

The offenses charged in said indictment (Exhibit "A") constitute violations of Sections 580, 932, 889 (1) and 889 (4) of the Penal Law of the State of New York. The offenses charged in said indictment are misdemeanors and felonies. Said indictment contains twenty-one (21) counts. The defendant Joseph Stacher is accused in the First, Third, Sixth, Seventh, Eighth, Ninth, Tenth and Eleventh Counts, and, if convicted, is liable to imprisonment for consecutive terms of thirty-four (34) years and to a fine of $500.

The above listed crimes charged in said indictment (Exhibit "A"), were committed in the State of New York in and about the months of July and August, 1947, and

thereafter. The crimes arose from the operation of a large gambling casino known as "Arrowhead Inn", located in the County of Saratoga, State of New York. Said gambling casino was operated during the racing season in Saratoga County and in and about the month of August, [fol. 26] and therein conducted were such games as roulette, dice, bird cage, chemin de fer.

Under Section 580 of the Penal Law of the State of New York, it is a crime, "If two or more persons conspire:

> 1. To commit a crime; or . . .
> 6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws, . . ."

The indictment (Exhibit "A") charges the defendant Joseph Stacher, together with others, of conjuring to commit the crimes of Forgery in the Third Degree, in violation of Section 889 of the Penal Law, Uttering a Forged Instrument, in violation of Section 881 of the Penal Law, Being Common Gamblers, in violation of Section 970 of the Penal Law, Maintaining, Owning and Operating a Gambling Establishment, in violation of Section 973 of the Penal Law, and Misconduct of Officers and Directors of Stock Corporations in violation of Section 664 of the Penal Law.

The said "Arrowhead Inn" consisted of a number of buildings located on realty owned by Arrowhead, Inc., a "dummy" corporation. The main building was a beautifully furnished and well equipped restaurant and night club. Directly adjacent thereto was the gambling casino. The excellent cuisine and the expensive floor shows of the night club attracted bettors who found their way to the casino to gamble. To successfully operate the night club it was necessary that a license to sell liquor on the premises be secured from the New York State Liquor Authority. The defendants Joseph Stacher, Meyer Lansky and James Lynch formed a co-partnership under the name and style of L. and L. Co., the purpose of which was to engage in gambling at Arrowhead Inn and to operate the casino.

Because of the personal history of the partners, they could not successfully apply to the New York State Liquor Authority for a license under their own names. They there- [fol. 27] fore induced a well known restaurateur from New York City, one Mike Urany, to lease the restaurant and operate it for them. They induced Urany to apply for a liquor license in his name and to conceal from the State Liquor Authority the fact that actually they were the principals in the transaction. This written application was filed with the State Liquor Authority and on or about the 28th day of July, 1947, the State Liquor Authority issued a summer liquor license in the name of Mike Urany d/b/a Arrowhead Inn, effective from July 28, 1947 to October 31, 1947. Upon this misrepresentation and concealment induced by Stacher and his partners, the State Liquor Authority issued a license to Urany.

Under Section 932 of the Penal Law of the State of New York "A person who, with intent to cheat or defraud another, designedly, by color or aid of a false token in writing, or other false pretenses, obtains the signature of any person to a written instrument, is punishable by imprisonment in a state prison for not more than three (3) years, . . ."

To continue the illusion that Mike Urany d/b/a Arrowhead Inn, the restaurant, was not identified with the Stacher, Lynch and Lansky partnership, "L. and L. Co.", which operated the gambling casino, the defendants, including Joseph Stacher, set up or caused to be set up, separate bank accounts, and separate sets of books and records. However, since the restaurant operated at a loss, it was necessary that it be subsidized. This was done by making deposits in large amounts in the restaurant account from checks drawn on the gambling account.

After the close of the season and on or about the 24th day of September 1947, the defendants Joseph Stacher, Meyer Lansky and James Lynch, acting in concert with and aided and abetted by other defendants and by their [fol. 28] accountant, one I. George Goldstein falsified a writing purporting to set forth a financial summary of the operation of the restaurant ending August 30, 1947, which said writing falsely created the illusion that the restau-

rant enterprise was an independent entity owned and operated independently of the said defendants, that certain sums of money had in good faith been paid out during the month of August, 1947 as rent; that the cash resources utilized in the operation of said restaurant and the sums disbursed for the account and operation of the said restaurant during the period were fully identified, listed and summarized in the said writing; that the said restaurant operated during the said period at a profit; and that the summaries were related to or derived from an actual audit of the books of the said restaurant; whereas, the restaurant enterprise was not an independent entity but was knowingly created for the personal financial benefit of the defendants; that sums paid out as rent had not been paid out in good faith; the cash resources utilized for the operation of the said restaurant and the sums disbursed for the account and operation of the said restaurant during the said period were not fully identified, listed and summarized; the said restaurant operated during the said period at a substantial loss; and no audit of the books of the restaurant had been made or was in process as of that date.

Under Section 889 (1) of the Penal Law of the State of New York "A person who, being an officer or in the employment of a corporation, association, partnership or individuals falsifies, or unlawfully and corruptly alters, erases, obliterates or destroys any accounts, books of accounts, records, or other writing, belonging to or appertaining to the business of the corporation, association or partnership or individuals—is guilty of forgery in the third degree."

[fol. 29] Forgery in the third degree is a crime and punishable by imprisonment for not more than five (5) years. (Section 893, Penal Law of the State of New York).

The same false financial statement of September 24, 1947, purporting to be a financial summary of the operation of the restaurant ending August 30, 1947 was compiled, prepared and issued, and made with the intent to defraud the New York State Tax Commission and the Collector of Internal Revenue of the United States of America, who were creditors for income tax purposes of the defendant Stacher and the restaurateur, Mike Urany.

Under Section 889 (4) of the Penal Law of the State of New York.

> "The altering, erasing, obliterating, or destruction of any account, book of account, record, or writing, or the making of a false entry in an account, statement of financial condition, or book of accounts, or the willful omission of material entries in such account, statement or books of account, by any person whether by his own hand or the hand of another, if made with intent to defraud creditors or to conceal a crime, or to conceal from creditors or stockholders or other persons interested matters materially affecting the financial condition of any individual, corporation, association, or partnership: or to provide a basis for the obtaining of credit or property by or for such individual, corporation, association, or partnership, shall render such person guilty of forgery in the third degree, within the meaning of this section; but this provision shall not apply to any clerk, bookkeeper, or other employee, who, without personal profit or gain, merely executes the orders of his employer."

The said Joseph Stacher was present in the State of New York at the time of the Commission of the Crimes of Conspiracy, and of Obtaining the Signature of a Person to a Written Instrument With Intent to Cheat and Defraud, alleged in the aforesaid indictment (Exhibit "A") and the said Joseph Stacher thereafter fled from the State of New York.

Investigation by this office has determined as a fact that [fol. 30] Joseph Stacher of Newark, New Jersey leased a house from Dorothy E. Wait, Saratoga Springs, New York from the 15th day of June, 1947 to September 1, 1947 at a total rental of Six Thousand ($6,000) Dollars. The house was that known as No. 658 North Broadway, Saratoga Springs, New York. A copy of the said lease is annexed hereto as "Exhibit B" and made a part hereof.

The affidavits of Joseph Folts verified the 4th day of November, 1952 and of Helen E. Tracy, verified the 5th day of November, 1952 state that Joseph Stacher, also known as Joe Rosen, visited Roosevelt Baths, Saratoga

Springs, New York from June 16, 1947 to September 6, 1947. These affidavits are annexed hereto and made a part of this application.

By letter dated the 4th day of November, 1952, the Federal Bureau of Investigation, United States Department of Justice, Washington D. C. furnished the fingerprint record of Joseph Stacher, F.B.I. number 504798, and copies of Joseph Stacher's fingerprints and photographs. The photograph, according to this record is that of Joseph Stacher and was taken in 1924 by the Newark New Jersey Police Department. At the time of his arrest in 1924, Joseph Stacher was booked as Joe Rosen and was assigned number 8751. The record is attached hereto as Exhibit "C" and is made a part hereof.

Your deponent states that witnesses before the Grand Jury have identified the photograph of Joe Rosen, FBI number 504798 as the Joseph Stacher who is the subject of the indictment (Exhibit "A").

A warrant for the arrest of the said Joseph Stacher was duly issued after the return of the aforesaid indictment (Exhibit "A") and an exemplified copy of said warrant is attached hereto, marked "Exhibit D" and is made a part hereof.

[fol. 31] Based upon the indictment and bench warrant, Joseph Stacher was arrested by the Sheriff of Clark County, Nevada, and was arraigned in Justice's Court of Las Vegas, Township, on October 18, 1952 on a Fugitive from Justice Complaint.

By letter dated October 23, 1952, George M. Dickerson, Deputy District Attorney, Clark County, Nevada, advised that a fugitive hearing had been fixed for November 19, 1952, at 10:00 a.m.

This application is not made for the purpose of enforcing the collection of a debt or for the enforcement of a private claim or purpose whatever; and if the requisitions applied for be granted, criminal proceedings shall not be used for any of said purposes.

No previous application for this relief has been made.

Wherefore your deponent prays that the Governor of the State of New York make requisition on the Governor of the State of Nevada for the return of the aforesaid Joseph

Stacher (alias Doc Stacher, Doc Harris, Doc Rosen and Joe Rosen), a fugitive from justice, and that said requisition designate Frank A. Keane, Cpl., Bureau of Criminal Investigation of the State Police of the State of New York and James Cerino, Trooper, Bureau of Criminal Investigation, State Police, State of New York, as the duly accredited agents of the State of New York to receive the person of the said Joseph Stacher (alias Doc Stacher, Doc Harris, Doc Rosen and Joe Rosen) and that the Governor of the State of New York duly authenticate this affidavit and the indictments and warrants marked as exhibits and forming a part thereof.

Paul W. Williams, Special Assistant Attorney General of the State of New York.

[fol. 32] State of New York,
County of Saratoga, ss.:

Paul W. Williams, being duly sworn, deposes and says that he is the Special Assistant Attorney General named in the aforegoing affidavit in support of an application for the requisition of the return of a fugitive; that he has read the foregoing affidavits and application and knows the contents thereof; that the same is true to his own knowledge except to the matters therein stated to be alleged on information and belief as to those matters, he believes it to be true. This affidavit is made in accordance with the provision of Section 852, Subdivision III of the Code of Criminal Procedure of the State of New York and a part of the Uniform Extradition Act.

Paul W. Williams, Special Assistant Attorney General of the State of New York.

Subscribed and sworn to before me this 7th day of November, 1952.

Henry Clay Greenberg, Justice of the Supreme Court of the State of New York.

[fol. 33] EXHIBIT "A" TO AFFIDAVIT

SUPREME COURT OF THE STATE OF NEW YORK, SARATOGA COUNTY

PEOPLE OF THE STATE OF NEW YORK, Plaintiff,

against

MEYER LANSKY, JOSEPH STACHER (alias Doc Stacher, Doc Harris and Doc Rosen), James Lynch (alias Piggy Lynch), Herman Weiner (alias Hyman Weiner and Joseph A. Bond, George Brown, Charles Manney (alias Charley Manning, Charles Manne, Charles Mann, Samuel Mann and S. Mann), John Coakley (alias O. K. Coakley), and Arrowhead, Inc., Defendants

First Count

The Extraordinary Grand Jury of the County of Saratoga by this indictment accuse the defendants of the crime of Conspiracy in violation of Section 580 of the Penal Law committed as follows:

The defendants, Meyer Lansky, Joseph Stacher (alias Doc Stacher, Doc Harris and Doc Rosen), James Lynch (alias Piggy Lynch), Herman Weiner (alias Hyman Weiner and Joseph A. Bond), George Brown, Charles Manney (alias Charley Manning, Charles Manne, Charles Mann, Samuel Mann and S. Mann), John Coakley (alias O. K. Coakley), and Arrowhead, Inc. (hereinafter referred to as the "corporate defendant"), a corporation organized and existing under the laws of the State of New York, in the County of Saratoga, during the period from on or about July 11, 1928, up to and including the date of this indictment, did wilfully, corruptly, and unlawfully conspire, combine and confederate and agree with each other and each with the others, and with William C. Fennell, J. Arthur Adler (alias Jack Adler), Irwin Grundman, Charles L. Singer, I. George Goldstein, Seymour Eisen, and other persons to the Grand Jury aforesaid unknown, (a) to commit acts injurious to public morals and for the perversion and obstruction of the due administration of the laws and (b) to commit crimes, to wit, the crimes of violating Sections 664, 665, 881, 889, 970 and 973

[fol. 34] of the Penal Law, in that said defendants did unlawfully, knowingly, wilfully and corruptly conspire to commit the crimes of forgery in the third degree, uttering a forged instrument, being common gamblers, maintaining, owning and operating a gambling establishment, to wit, Arrowhead Inn, and certain gambling casinos thereto annexed and a part thereof, and misconduct of directors, officers, agents and employees of corporations, to wit, the payment to stockholders of a part of the capital stock of a corporation, the unlawful application of funds of a corporation to the purchase of shares of its own stock, and the knowing receipt of the property of a corporation and, with the intent to defraud, the omission to make a full and true entry thereof in the books and accounts of the corporation

It was part of the conspiracy that:

(1) The corporate defendant should hold record title to the premises located in the City of Saratoga Springs, County of Saratoga, upon which were situated at all times during the continuance of this conspiracy, the restaurant and casino popularly known as "Arrowhead Inn";

(2) On or about December 15, 1933, two of said conspirators, who were the owners of all the outstanding stock of the corporation and were its sole officers and directors, should induce two professional men to accept as dummies and as nominees of the said conspirators, a transfer to themselves of all of the outstanding stock of the corporate defendant, and subsequently to consent and cause themselves to be elected as the sole officers and directors of the corporate defendant;

(3) Upon said premises so owned by the corporate defendant should be situated a building designed for use as a restaurant and immediately adjacent thereto, and connected therewith by a runway, should be a separate building containing various rooms designed for use for gambling. The portion of the premises designed for use as a restaurant will hereinafter sometimes be referred to as the "Restaurant" and the building containing rooms designed for gambling will hereinafter sometimes be referred to as the "Casino";

(4) The casino should be used and operated as a place for gambling and that games of chance, viz., games commonly known as roulette, chemin de fer, bird cage, craps, and other

games to the Grand Jury aforesaid unknown, should be operated by the conspirators for their personal profit.

[fol. 35] (5) The Restaurant should exist and be operated solely to attract clientele to the Casino, but it should be pretended and represented that the ownership and operation of the Restaurant were separate and distinct from the ownership and operation of the Casino;

(6) An individual of good name, character and reputation experienced as a restaurateur, should be induced to sign, as tenant, a purported lease by the terms of which such individual should agree to occupy and operate the Restaurant during the annual gambling and horseracing season and should agree to pay the landlord, the corporate defendant herein, a specified sum as rent for said term, and the so-called lease should be conditioned upon the granting of a summer liquor license to the said restaurateur by the New York State Liquor Authority;

(7) The said purported tenant should in his own name file with the Clerk of the County of Saratoga a certificate by which it should appear that he was doing business under the assumed name of "Arrowhead Inn"; the said purported tenant, in successive years, should procure the licenses and consents prerequisite to the operation of a reataurant, bar, and cabaret in that portion of the premises known as the Restaurant; and for these and other purposes, said purported tenant of the Restaurant should be induced to conceal the fact and identity of the true principals and to represent himself falsely and hold himself out to pertinent public officials and agencies including the New York State Liquor Authority and the income tax authorities of the State and Federal Governments as the sole proprietor and operator of the Restaurant, and should file all required applications, tax returns, reports, and other documents relating to employment, licenses, income, and other matters, designating the enterprise by his own name, "doing business as 'Arrowhead Inn'"

(8) A local figure well acquainted and on good terms with the officials in the various public offices and with the dominant politicians in the area, should be retained over the years as a necessary and trusted member of the conspiracy

to provide on a year-round basis the services prerequisite to profitable operation of the Casino;

[fol. 36] (9) The purported tenant should be tacitly guaranteed against any losses resulting from the operation of the Restaurant and be assured a sum certain by way of seasonal remuneration for rendering the aforesaid services;

(10) The Resturant should be operated on a lavish and extravagent scale and provide food of choice quality and of greatest delicacy; should entertain its guests with performances by stage and screen celebrities of national reputation and with widely popular dance orchestras; should, as a consequence, sustain a loss on its operation and incur a deficit which should be met from the proceeds of the gambling Casino; all with the purpose and design of attracting to the premises the maximum number of patrons of appropriate economic position, who should be induced to proceed from the Restaurant to the Casino to participate in the gambling in the Casino.

(11) Checking accounts in which to deposit the bank checks taken in by the Casino should be opened and maintained in false and fictitious names, in order to conceal the identity of the true principals and the fact of their responsibility for the gambling and related criminal acts committed on the premises, and their connection with the entire criminal enterprise as set forth in this Indictment.

(12) The corporate defendant should exist as an empty entity and dummy merely meeting carrying charges on its mortgage indebtedness, paying the minimum expenses necessary to preserve and protect its title to the land on which Arrowhead Inn was situated and preserve and protect the buildings comprising said Inn, and to provide a cloak of respectability and legality behind which to operate the gambling enterprise and the Restaurant "front".

(13) The stock of the corporate defendant should be so held and transferred as to insure at all times to the beneficial owners their undisturbed enjoyment of the premises; and officers and directors of the corporate defendant should be selected with like design.

[fol. 37] (14) To heighten the illusion and fiction that the Restaurant was a bona fide, independent enterprise, and to mislead the New York State Liquor Authority and the New

York and Federal income tax authorities and others to whose attention they might reasonably be expected to come, financial statements should be formally prepared by certified public accountants based upon summaries taken from the books of the Restaurant and distorted in such respects as to reflect most advantageously for liquor license and income tax purposes the "operations" of the supposed Restaurant enterprise, and such financial statements should be issued, published and uttered to the conspirators and others.

(15) The defendants should share in fixed proportions the net profits of the gambling operations conducted in the Casino.

(16) The defendants should utilize the capital of the corporate defendant for their individual, personal use and benefit with complete disregard for and in violation of statutory injunctions relating to the use and transfer of corporate capital and property and to the purchase by a corporation of its own stock.

(17) The defendants should withhold and divert from the individual in whose name the Restaurant operation was conducted, books, worksheets, documents and records which had been maintained in the course of the Restaurant operation and which summarized and otherwise related to the said Restaurant operation, and should conceal and destroy the same.

[fol. 38] Overt Acts

In furtherance of the conspiracy, and to effect the objects thereof, the defendants and each of them did and caused to be done, the following overt acts, each of which was committed within the County of Saratoga; that:

First: During the period from July 11, 1928, to December 15, 1933, the defendant Charles Manney and one Harry Winston each owned 150 shares of the 300 authorized and outstanding shares of stock of the corporate defendant.

Second: During the period from July 11, 1928, to May 28, 1934, the defendant Charles Manney was President and Director of the corporate defendant, the defendant

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John Coakley, alias O. K. Coakley was Vice President and Director thereof, and the said Harry Winston was Secretary-Treasurer and Director thereof.

Third: On or about December 15, 1933, the defendant Charles Manney and the said Harry Winston, transferred, set over and assigned all of their stock in the corporate defendant to Dr. Charles L. Singer and Dr. Peter Mogull, and on or about May 28, 1934, the said Charles Manney and the said Coakley and Winston all resigned as Officers and Directors of the corporate defendant.

Fourth: On or about June 1, 1934, the said Dr. Charles L. Singer, the said Dr. Peter Mogull and one Murray D. Firstman were elected Directors of the corporate defendant and were elected President, Treasurer and Secretary, respectively, of the said corporate defendant.

Fifth: One J. Arthur Adler acting as Attorney for Arrowhead, Inc., conferred on or about June 1, 1946, with Mike Urany and his Attorney, Philip Smith, and outlined the content of a Lease to be drawn whereby Arrowhead, Inc., would lease the Restaurant and one out-building to Mike Urany for the 1946 season, and the said Adler requested the said Smith the prepare said Lease.

Sixth: On or about June 19, 1946, one James C. Fennell obtained the signature and oath of the said Mike Urany to an application for issuance of a Summer Liquor License [fol. 39] (Restaurant) which was in due course filed with the local office of the Alcoholic Beverage Control Board in the City of Saratoga Springs.

Seventh: From on or about August 7, 1946 to on or about September 14, 1946, the defendant Weiner maintained in the Saratoga National Bank an account in the fictitious name of Joseph A. Bond in which the defendants deposited for collection large numbers of checks in substantial amounts received from the bettors in the Casino.

Eighth: On or about September 3, 1946 the sum of Nine Thousand ($9,000) Dollars was transferred by check drawn on the account in the name of Joseph A. Bond in the Saratoga National Bank and was delivered and issued to Arrowhead Inn, the named payee thereof.

Ninth: During the period from on or about July 1, 1946 to September 30, 1946, the defendant Charles Manney was

present continuously in the Restaurant and in the Casino and supervised matters relating to the management, operation and maintenance of the Casino, of the Restaurant and of the premises.

Tenth: On or about August 21, 1946, a check was issued from the Arrowhead Inn account with the Saratoga National Bank in the amount of Three Hundred Seven ($307) Dollars purportedly for repair of roads upon the premises at the instruction of Charles Manney.

Eleventh: During the period from on or about July 1, 1946 to September 30, 1946, the defendant John Coakley was present continuously in the Restaurant and in the Casino and supervised matters relating to the management of the Restaurant.

Twelfth: During the month of August, 1946, the defendant John Coakley occupied as a residence a house rented for him by James C. Fennell situated in the City of Saratoga Springs.

[fol. 40] Thirteenth: On or about August 1, 1947, the defendants Meyer Lansky, Joseph Stacher and James Lynch formed a co-partnership under the name and style of L. & L. Co., the purpose of which was to engage in gambling at Arrowhead Inn and to operate the Casino.

Fourteenth: On or about August 7, 1947, the defendant George Brown opened a checking account in the Saratoga National Bank and as an initial deposit, placed therein a check in the amount of Ten Thousand Eight Hundred Twelve and 08/100 ($10,812.08) Dollars of S. & L. Amusement Co., dated August 7, 1947, drawn on the Saratoga National Bank.

Fifteenth: During the period from August 7, 1947 to September 17, 1947, the defendants deposited for collection in the said account maintained in the name of the defendant George Brown large numbers of checks in substantial amounts received from the bettors in the Casino.

Sixteenth: On or about August 21, 1947, one Carmen Miranda was paid one week's salary for performing in the Restaurant by a check in the amount of Ten Thousand ($10,000) Dollars drawn to her order by the defendant George Brown.

Seventeenth: On August 26, 1947, the defendant George

Brown issued a check to the order of Arrowhead Inn in the amount of Seven Thousand Five Hundred Eighty Six and 05/100 ($7,586.05) Dollars.

Eighteenth: On August 28, 1947, the defendant George Brown issued a check to the order of Arrowhead Inn in the amount of Eighteen Thousand Two Hundred Sixty Nine and 46/100 ($18,269.46) Dollars.

Nineteenth: On August 30, 1947, the defendant George Brown issued a check to the order of Arrowhead Inn in the amount of Two Thousand Five Hundred Thirty Nine and 80/100 ($2,539.80) Dollars.

Twentieth: On August 30, 1947, the defendant George Brown issued a check to the order of Arrowhead Inn in the amount of Two Thousand Eight Hundred Forty ($2,840) Dollars.

Twenty-First: From on or about August 5, 1947 to on or about August 30, 1947, the defendant James Lynch was in daily attendance in the Casino and supervised and managed the gambling operations therein.

[fol. 41] Twenty-Second: From on or about August 1, 1947 to on or about August 30, 1947, the defendant Meyer Lansky was in daily attendance in the Restaurant and conferred and gave instructions to Seymour Eisen, Henry Stack and Bonardi, the bookkeeper, the steward and the headwaiter, respectively.

Twenty-Third: From on or about August 1, 1947 to on or about August 30, 1947, the defendant Joseph Stacher was in daily attendance in the Casino and in the Restaurant and conferred with and issued instructions to employees in the Restaurant and Casino.

Twenty-Fourth: From on or about August 1, 1947, to on or about August 30, 1947, each of the defendants herein named received amounts of food and beverages for their own consumption and the consumption of their guests, the bill for which was in each case in its entirety charged on the books of the Restaurant to the account of the Casino;

Twenty-Fifth: During the month of August, 1947, I. George Goldstein rented and, with his family, occupied a residence located in the City of Saratoga Springs.

Twenty-Sixth: During the month of August, 1947, the

defendant James Lynch rented and, with his family, occupied a residence located in the City of Saratoga Springs.

Twenty-Seventh: During the month of August, 1947, the defendant Joseph Stacher rented and, with his family, occupied a residence located in the City of Saratoga Springs.

Twenty-Eighth: During the month of August, 1947, the defendant Meyer Lansky, with his family, occupied a residence in the City of Saratoga Springs, which had been rented for him by one George Wood.

Twenty-Ninth: On or about August 1, 1947, the defendant Herman Weiner and one Jo Ann Weiner accepted a transfer, delivery and assignment of two (2) certificates representing a total of three hundred (300) shares of the capital stock of Arrowhead, Inc.

Thirtieth: On or about November 24, 1947, the defendant Herman Weiner withdrew Four Thousand ($4,000) Dollars from the corporate funds of the corporate defendant, and delivered said sum to Charles L. Singer, by way of payment to the said Charles L. Singer and Peter Mogull, for the purchase price of the three hundred (300) shares of the capital stock of Arrowhead, Inc. which had been [fol. 42] owned by the said Singer and Mogull.

Thirty-First: During the period from on or about December 17, 1947 to on or about October 25, 1948, Charles L. Singer paid to and for the account of the defendant Charles Manney, in cash and by check, the total amount of the Four thousand ($4,000) Dollars which the said Singer had received from the defendant Herman Weiner, as aforesaid.

Thirty-Second: On or about August 4, 1947, the defendants George Brown and James Lynch executed a lease of safe deposit box No. 242 in the vaults of the Saratoga National Bank, in the City of Saratoga Springs, whereby the defendant Brown became the lessee and the defendant Lynch became the deputy in relation to the said box.

Thirty-Third: On or about August 30, 1947, the defendant George Brown executed a power of attorney with respect to safe deposit box No. 242 in the vaults of the Saratoga National Bank, as aforesaid, whereby the said Brown designated and appointed the defendant Weiner as his deputy to have access to the said box.

Thirty-Fourth: On or about August 30, 1948, the defendant Herman Weiner procured a bank money order at the Saratoga National Bank in the amount of Two Hundred Twenty Five ($225.50) and 50/100 Dollars, to the order of Millard Coal Co., Inc. for the account of Arrowhead Inn.

Thirty-Fifth: On or about August 31, 1948, the defendant Herman Weiner procured a bank money order at the Saratoga National Bank in the amount of One Hundred Fifty ($150) Dollars, to the order of A. F. and A. D. Burdick for the account of Arrowhead Inn.

Thirty-Sixth: On or about May 17, 1949, J. Arthur Adler informed the manager of the New York Telephone Company, in the Saratoga Springs office of the said telephone company, that Arrowhead Inn would open for the 1949 horse racing season.

[fol. 43] Thirty-Seven: On or about May 1, 1951, J. Arthur Adler had in his possession the check stub book relating to the account of the corporate defendant at the Irving Trust Company in New York City, together with forty (40) checks more or less signed in blank by the defendant Herman Weiner.

Thirty-Eighth: On or about May 1, 1951, the defendants obtained and delivered to J. Arthur Adler the sum of Eighty Five Hundred ($8500) Dollars purportedly representing the proceeds from the sale of chattels on the Arrowhead Inn property.

Thirty-Ninth: During the period from on or about May 17, 1951 to November 23, 1951, the defendant Herman Weiner transferred and paid to J. Arthur Adler, and the said Adler withdrew from the account of the Irving Trust Company and applied to his own use, the sum of Three Thousand Eight Hundred Fifty ($3,850) Dollars, otherwise than in payment for a just demand.

Fortieth: On or about August 1, 1951, the defendant Herman Weiner and J. Arthur Adler withdrew from the account of the corporate defendant at the Irving Trust Company, and transferred and paid to the said defendant Herman Weiner the sum of One Thousand ($1,000) Dollars, otherwise than in payment for a just demand.

Forty-First: On or about May 2, 1952, the defendant

Herman Weiner and J. Arthur Adler withdrew from the account of the corporate defendant at the Irving Trust Company, and transferred and paid to the said defendant Mike Urany the sum of Two Thousand ($2,000) Dollars, otherwise than in payment for a just demand.

Forty-Second: On or about July 1, 1952, the defendant Herman Weiner and J. Arthur Adler withdrew from the account of the corporate defendant at the Irving Trust Company, and transferred and paid to the said Mike Urany the sum of Fifteen Hundred ($1500) Dollars otherwise than in payment for a just demand.

[fol. 44] Second Count

And the Grand Jury aforesaid by this Indictment further accuse the defendant Herman Weiner of the crime of Obtaining the Signature of a Person to a Written Instrument With Intent to Cheat and Defraud, designedly, by aid of false pretense, in violation of Section 932 of the Penal Law, committed as follows:

On the 15th day of July, 1946, one Mike Urany and James F. Fennell, deceased, acting in concert with and aided and abetted by the defendant Herman Weiner and by Meyer Lansky, Joseph Stacher, James Lynch, Charles Manney and John Coakley, in the County of Saratoga, with intent to cheat and defraud the New York State Liquor Authority, unlawfully and feloniously obtained the signatures of John F. O'Connell and Alfred Schwenker, on behalf of the New York State Liquor Authority, to a written instrument, namely, a Summer Liquor License (Restaurant) in the name of Mike Urany, d/b/a Arrowhead Inn, effective from July 15, 1946 to October 31, 1946, inclusive, by color and aid of false pretense, namely, an Application for Summer Liquor License (Restaurant) signed and sworn to by Mike Urany on the 19th day of June, 1946, which Application contained certain statements, to wit: that Mike Urany was the sole proprietor and partner in the restaurant sought to be licensed as aforesaid; that a bona fide lease had been executed by the said Mike Urany and the owner of the premises; that none of the partners in the said restaurant had ever been arrested or indicted for any crime; that none of the said partners had ever

been convicted of any felony, or any other crime; that there was no person other than the purported applicant, the said Mike Urany, who was interested directly or indirectly either in the premises or in the business to be licensed; that there was no person other than the said applicant who had any lien or mortgage on, or had made any loan to, or had any other interest in the business to [fol. 45] be licensed; that none of the partners in the said restaurant had ever been known by any other name or names;

Whereas, each of said statements in the said application for Summer Liquor License (Restaurant) was false and untrue and was known by the defendant to be false and untrue; and, in fact, Mike Urany was not the sole proprietor and partner in the restaurant sought to be licensed, as aforesaid, but Charles Manney, John Coakley, the defendant Herman Weiner, and others to the Grand Jury aforesaid unknown, were the real partners in the said restaurant; the writing purporting to be a lease between the said Mike Urany and the owner of the premises was not a bona fide lease; at least one of the partners in the said restaurant had theretofore been arrested and indicted for a crime or offense; at least one of the partners had been convicted of a felony or other crime or offense; Charles Manney, John Coakley, and the defendant Herman Weiner and others to the Grand Jury aforesaid unknown, were interested directly and indirectly in the premises and in the business to be licensed; Charles Manney, John Coakley and the defendant Herman Weiner and others to the Grand Jury aforesaid unknown had a lien or mortgage on, had made loans to, and had interests in the business to be licensed; and Charles Manney and John Coakley, two of the partners in said restaurant, had been known by other names;

And such Application and statements were made, and said Application was issued and transmitted, and caused by the defendants to be issued and transmitted, to the New York State Liquor Authority with the intent to cheat and defraud the said New York State Liquor Authority, and its officers, agents and representatives, and with the intent that the said Authority, and its officers, agents and rep-

resentatives should believe and rely upon the statements [fol. 46] and representations so made as aforesaid, and should be induced thereby to affix validating signatures to and to issue the said Summer Liquor License (Restaurant).

The defendant Herman Weiner was not an inhabitant of or usually or publicly a resident within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least fourteen (14) months duration since the date of the commission of the crime alleged in this Second Count of this Indictment, viz., the 15th day of July, 1946, in that the said defendant during such period was regularly and continuously resident in the State of Florida.

[fol. 47] Third Count

And the Grand Jury aforesaid by this Indictment further accuse the defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown and Charles Manney of the crime of Obtaining the Signature of a Person to a Written Instrument With Intent to Cheat and Defraud, designedly, by aid of false pretense in violation of Section 932 of the Penal Law, committed as follows:

On or about the 28th day of July, 1947, one Mike A. Urany and James C. Fennell, deceased, acting in concert with and aided and abetted by the said defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown and Charles Manney, in the County of Saratoga, with intent to cheat and defraud the New York State Liquor Authority, unlawfully and feloniously obtained the signatures of John F. O'Connell and Alfred Schwenker, on behalf of the New York State Liquor Authority, to a written instrument, namely, a Summer Liquor License (Restaurant) in the name of Mike Urany, d/b/a Arrowhead Inn, effective from July 28, 1947 to October 31, 1947, inclusive, by color and aid of false pretense, namely, an Application for Summer Liquor License (Restaurant) signed and sworn to by Mike Urany on the 10th day of July, 1947, which Application contained certain statements, to wit: That Mike Urany was the sole proprietor and part-

ner in the restaurant sought to be licensed as aforesaid; that a bona fide lease had been executed by the said Mike Urany and the owner of the premises; that an option to renew said purported lease was exercised by the said Mike Urany for the 1947 season; that none of the partners in the said restaurant had ever been arrested or indicted for any crime; that none of the partners in the said restaurant had ever been convicted of any felony, or any other crime; that there was no person other than the purported applicant, the said Mike Urany, who was interested, directly or indirectly, either in the premises or in the business to be licensed; that there was no person other than the said [fol. 48] applicant who had any lien or mortgage on, or had made any loan to, or had any other interest in the business to be licensed; that none of the partners in the said restaurant had ever been known by any other name or names;

Whereas, each of said statements in the said Application for Summer Liquor License (Restaurant) was false and untrue and was known by the said defendants to be false and untrue; and, in fact, Mike Urany was not the sole proprietor and partner in the restaurant sought to be licensed, as aforesaid, but the defendants Lansky, Stacher, Lynch, and others to the Grand Jury unknown, were the real partners in the said restaurant; the writing purporting to be a lease between the said Mike Urany and the owner of the premises was not a bona fide lease; the said Mike Urany had not exercised an option to renew said purported lease for the 1947 season; at least one of the partners in the said restaurant had theretofore been arrested and indicted for a crime or offense; at least one of the said partners had been convicted of a felony or other crime or offense; the defendants Lansky, Stacher, Lynch, Weiner, Brown and Manney, and others to the Grand Jury aforesaid unknown, were interested directly and indirectly in the premises and in the business to be licensed; each of the said defendants and other persons to the Grand Jury aforesaid unknown had a lien or mortgage on, had made loans to, and had interests in the business to be licensed; and each of the defendants Lansky, Stacher, Weiner and Manney were then or had been known by other names;

And such Application and statements were made, and said Application was issued and transmitted, and caused by the defendants to be issued and transmitted, to the New York State Liquor Authority with the intent to cheat and defraud the said New York State Liquor Authority, and its officers, agents and representatives, and with the intent [fol. 49] that the said Authority, and its officers, agents and representatives should believe and rely upon the statements and representations so made as aforesaid, and should be induced thereby to affix validating signatures to and to issue the said Summer Liquor License (Restaurant).

The defendant Meyer Lansky was not an inhabitant of or usually or publicly a resident within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for one or more periods of at least sixty (60) days duration each since the date of the commission of the crime alleged in this Third Count of this Indictment, viz., on or about the 28th day of July, 1947, in that in the year 1948 the said defendant was absent from the State of New York for approximately six months, during which he sojourned in the State of Florida, in Cuba, and in other places to the Grand Jury aforesaid unknown; in the year 1949, the said defendant travelled to Europe and other places to the Grand Jury aforesaid unknown for a period of approximately sixty (60) days duration; and, in addition, the said Lansky was not a resident or in attendance upon business, as aforesaid, for periods each of approximately thirty (30) continuous days in the respective years of 1949, 1950, 1951 and 1952, during which he sojourned in the State of Florida and in other places to the Grand Jury aforesaid unknown.

The defendant, Joseph Stacher, was not an inhabitant of our usually or publicly a resident within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for one or more periods of at least sixty (60) days duration since the date of the commission of the crime alleged in this Third Count of this Indictment, viz., on or about [fol. 50] the 28th day of July, 1947, in that the said defendant maintained a residence in the State of New Jersey,

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during each of years 1947, 1948, 1949, 1950, 1951, and 1952 to the date of this Indictment, wherein he usually or publicly resided; and which he acknowledged regularly and publicly to be his residence; in each of the years 1947, 1948, 1949, and 1950, the said defendants had business interests in the State of New Jersey, and in other places, to the Grand Jury aforesaid unknown, to which he personally attended regularly and continuously; and during each of the years 1951 and 1952 the said defendant had business interests in the State of Nevada and other places outside the State of New York to the Grand Jury aforesaid unknown, to which he personally attended regularly and continuously.

The defendant, James Lynch, was not an inhabitant within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least sixty (60) days duration since the date of the commission of the crime alleged in this Third Count of this Indictment, viz., on or about the 28th day of July, 1947.

The defendants Herman Weiner and George Brown were not inhabitants of or usually or publicly residents within the State of New York or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least sixty (60) days duration since the date of the commission of the crime alleged in this Third Count of this Indictment, viz., the 28th day of July, 1947, in that the said defendants during such period were regularly and continuously residents in the State of Florida.

The defendant, Charles Manney, during the period from on or about March 15, 1947 to on or about May 3, 1948 [fol. 51] lived under a false name, to wit: the name of Samuel Mann and the name S. Mann.

[fol. 52] Fourth Count

And the Grand Jury aforesaid by this Indictment further accuse the defendant, Herman Weiner of the crime of Forgery in the Third Degree, in violation of Paragraph 1

of the first Subdivision of Section 889 of the Penal Law, committed as follows:

On or about the 7th day of October, 1946, one Irwin Grundman, acting in concert with and aided and abetted by the defendant Herman Weiner, by Charles Manney, by Arrowhead, Inc., a corporation duly organized and existing under the laws of the State of New York, and by other persons to the Grand Jury aforesaid unknown, in the County of Saratoga, did unlawfully and corruptly falsify a writing appertaining to the business of the said Charles Manney and other persons to the Grand Jury aforesaid unknown, to wit, a restaurant and cabaret known as Arrowhead Inn, in that, on or about said date, the said defendant compiled, prepared and issued, a writing addressed to the said Arrowhead Inn under date of October 7, 1946, and purporting to set forth a financial summary of the operation of the restaurant known as Arrowhead Inn for the period August 1, 1946 to August 31, 1946, which writing falsely created the illusion that the said restaurant was an independent, entity owned and operated independently of the said defendant, and from which writing it falsely appeared that the said restaurant was operated under a bona fide lease; that certain sums of money had in good faith been paid out as rent during said period or credited as such to the supposed account of the purported landlord; and that the cash resources utilized for the operation of the said restaurant during the said period consisted exclusively of funds personslly invested by one Mike Urany in the restaurant enterprise and funds advanced to the said Mike Urany by way of bona fide loans requiring repayment; and that the said Mike Urany sustained a loss of Thirty One Thousand Seven Hundred and Eighty Two and 79/100 ($31,782.79) Dollars on the restaurant operation for the period;

[fol. 53] Whereas, said writing was a falsification and the defendant knew it to be a falsification; in fact, the restaurant enterprise was not an independent entity but had been knowningly created for the personal financial benefit of the defendant and of the said Charles Manney and other persons to the Grand Jury aforesaid unknown;

there was no bona fide lease of the restaurant for the said period; sums paid out as rent during the said period and credited as such had not been paid or credited as such in good faith; Mike Urany had not invested any money or thing of value in the said restaurant nor did he receive or accept from anyone any funds by way of loans requiring repayment; and the said Mike Urany personally did not sustain a loss of Thirty One Thousand Seven Hundred Eighty Two and 79/100 ($31,782.79) Dollars or of any other amount on the restaurant operation for the said period, all of which the said defendant well knew.

The defendant Herman Weiner was not an inhabitant of or usually or publicly a resident within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least twelve (12) months' duration since the date of the commission of the crime alleged in this Fourth Count of this Indictment, viz., the 7th day of October, 1946, in that the said defendant during such period was regularly and continuously a resident in the State of Florida.

[fol. 54] Fifth Count

And the Grand Jury aforesaid by this Indictment further accuse the defendant Herman Weiner of the crime of Forgery in the Third Degree in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law, committed as follows:

On or about the 7th day of October, 1946, one Irwin Grundman, acting in concert with and aided and abetted by the defendant Herman Weiner, by Charles Manney, by Arrowhead, Inc., a corporation duly organized and existing under the laws of the State of New York, and by other persons to the Grand Jury aforesaid unknown, in the County of Saratoga, did make a false statement of financial condition with intent to conceal from persons interested matters materially affecting the financial condition of certain individuals in that, on or about said date, the said defendant did, by the hand of the said Irwin Grundman, compile, prepare and issue to a restaurant and cabaret known as Arrowhead Inn under the date of October

7, 1946, a statement of financial condition of the said restaurant and cabaret for the period August 1, 1946 to August 31, 1946, and as of the end of said peroid which said statement of financial condition falsely created the illusion that the said restaurant enterprise was an independent entity owned and operated independently of the said defendant and of the said Charles Manney, and from which statement of financial condition it falsely appeared that the said restaurant was operated under a bona fide lease; that certain sums of money had in good faith been paid out during the said period as rent or had been credited as such to the supposed account of the purported landlord; that the cash resources utilized for the operation of the said restaurant during the said period consisted exclusively of funds personally invested by one Mike Urany in the restaurant enterprise and funds advanced to the said Mike Urany by way of bona fide loans requiring repayment; and that the said Mike Urany sustained a loss of Thirty One Thousand Seven Hundred Eighty Two and 79/100 ($31,782.79) Dollars on the restaurant operation for the said period;

[fol. 55] Whereas, said writing was a falsification and the defendant knew it to be a falsification; in fact, the restaurant enterprise was not an independent entity but had been knowingly created for the personal financial benefit of the defendant and of the said Charles Manney and other persons to the Grand Jury aforesaid unknown; there was no bona fide lease of the restaurant for the said period; sums paid out as rent during the said period and credited as such had not been paid or credited as such in good faith; Mike Urany had not invested any money or thing of value in the said restaurant nor did he receive or accept from anyone any funds by way of loans requiring repayment; and the said Mike Urany personally did not sustain a loss of Thirty One Thousand Seven Hundred Eighty Two and 79/100 ($31,782.79) Dollars or of any other amount on the restaurant operation for the said period, all of which the said defendant well knew.

And each of such particulars so misrepresented as aforesaid was a matter materially affecting the financial condition of the defendant, of the said Charles Manney and of the said Mike Urany.

And such statement of financial condition was compiled, prepared and issued, and was made by the defendant, as aforesaid, with the intent to conceal from the New York State Liquor Authority, being a person interested, the truth concerning each of the particulars so misrepresented as aforesaid.

The defendant Herman Weiner was not an inhabitant of or usually or publicly a resident within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least twelve (12) months' duration since the date of the commission of the crime alleged in this Fifth count of this Indictment, viz., the 7th day of October, 1946, in that the said defendant during such period was regularly and continuously a resident in the State of Florida.

[fol. 56] Sixth Count

And the Grand Jury aforesaid by this Indictment further accuse the defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown, Charles Manney, and Arrowhead, Inc., of the crime of Forgery in the Third Degree, in violation of Paragraph 1 of the first Subdivision of Section 889, of the Penal Law, committed as follows:

On or about the 24th day of September, 1947, one I. George Goldstein, acting in concert with and aided and abetted by the defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown, Charles Manney and Arrowhead, Inc., a corporation organized and existing under the laws of the State of New York, in the County of Saratoga, did unlawfully and corruptly falsify a writing appertaining to the business of one or more of said defendants, to wit: a restaurant and cabaret known as Arrowhead Inn, in that, on or about said date, the said defendants compiled, prepared and issued, and caused to be compiled prepared and issued, a writing addressed to the said Arrowhead Inn under date of September 24, 1947, purporting to set forth a financial summary of the operation of the restaurant known as Arrowhead Inn for the period August 4, 1947 to August 30, 1947 and containing a purported Balance Sheet as of August 30, 1947, and a

"Reconciliation of Net Profit as per Report with Final Adjusted Profit" for the said period, which said writing falsely created the illusion that the said restaurant enterprise was an independent entity owned and operated independently of the said defendants, and from which writing it falsely appeared that the said restaurant was operated under a bona fide lease; that certain sums of money had in good faith been paid out during said period as rent; that the cash resources utilized in the operation of the said restaurant and the sums disbursed for the account and operation of the said restaurant during the said period were fully identified, listed and summarized in the said writing; [fol. 57] that the said restaurant operated during the said period at a profit; and that the summaries were related to or derived from an actual audit of the books of the said restaurant;

Whereas, said writing was a falsification and the defendants knew it to be a falsification; in fact, the restaurant enterprise was not an independent entity but had been knowingly created for the personal financial benefit of the defendants; there was no bona fide lease of the restaurant for said period; sums paid out as rent had not been paid in good faith as rent; the cash resources utilized for the operation of the said restaurant and the sums disbursed for the account and operation of the said restaurant during the said period were not fully identified, listed and summarized; the said restaurant operated during the said period at a substantial loss; and no audit of the books of the said restaurant had been made or was in process on said date, all of which each of the defendants well knew.

[fol. 58] Seventh Count

And the Grand Jury aforesaid by this Indictment further accuse the defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown, Charles Manney and Arrowhead, Inc. of the crime of Forgery in the Third Degree, in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law, committed as follows:

On or about the 24th day of September, 1947, one I. George Goldstein, acting in concert with and aided and

abetted by the defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown, Charles Manney and Arrowhead, Inc., a corporation duly organized and existing under the laws of the State of New York, in the County of Saratoga, made a false statement of financial condition with intent to defraud creditors, in that, on or about said date, the said defendants did, by the hand of the said I. George Goldstein compile, prepare and issue to a restaurant and cabaret known as Arrowhead Inn, under the date of September 24, 1947, a statement of financial condition of the said restaurant and cabaret for the period August 4, 1947, to August 30, 1947 and as of the end of said period which statement contained a purported Balance Sheet as of August 30, 1947, and a "Reconciliation of Net Profit as per Report with Final Adjusted Profit" for the said period, which said statement of financial condition falsely created the illusion that the said restaurant enterprise was an independent entity owned and operated independently of the said defendants and from which statement of financial condition it falsely appeared that the said restaurant was operated under a bona fide lease; that certain sums of money had in good faith been paid out during the said period as rent; that the cash resources utilized for the operation of the said restaurant and the sums disbursed for the account and operation of the said restaurant during the said period were fully identified, listed and summarized in the said statement; that the said restaurant operated during the said period at a profit; [fol. 59] and that the summaries in the said statement of financial condition were related to or derived from an actual audit of the books of the said restaurant;

Whereas, said statement of financial condition was false and untrue and the defendants knew it to be false and untrue; in fact, the restaurant enterprise was not an independent enterprise but had been knowingly created for the personal financial benefit of the defendants; there was no bona fide lease of the restaurant for said period; sums paid out as rent had not been paid in good faith as rent; the cash resources utilized for the operation of the said restaurant and the sums disbursed for the account and operation of the said restaurant during the said period

were not fully identified, listed and summarized; the said restaurant operated during the said period at a substantial loss; and no audit of the books of the said restaurant had been made or was in process on said date, all of which each of the defendants well knew;

And such statement of financial condition was compiled, prepared and issued, and was made with the intent to defraud the New York State Tax Commission and the Collector of Internal Revenue of the United States of America, who were creditors for income tax purposes of the defendants and of Mike Urany, the individual in whose name the said restaurant was operated during the said period, with the intent that the said statement and its contents should be believed, relied upon and adopted by those preparing the income tax returns to be filed by the defendants and by the said Mike Urany, to the detriment of the said State of New York and the United States of America, and with the intent that they should be believed and relied upon by the agents of the said State Tax Commission and Collector of Internal Revenue.

[fol. 60] Eighth Count

And the Grand Jury aforesaid by this Indictment further accuse the defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown, Charles Manney and Arrowhead, Inc. of the crime of Forgery in the Third Degree, in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law, committed as follows:

On or about the 24th day of September, 1947, one I. George Goldstein, acting in concert with and aided and abetted by the defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown, Charles Manney, and Arrowhead, Inc., a corporation duly organized and existing under the laws of the State of New York, in the County of Saratoga, made a false statement of financial condition with the intent to conceal from creditors and other persons interested matters materially affecting the financial condition of certain individuals in that, on or about said date, the said defendants did, by the

hand of the said I. George Goldstein, compile, prepare and issue to a restaurant and cabaret known as Arrowhead Inn, under date of September 24, 1947, a statement of financial condition of the said restaurant and cabaret for the period August 4, 1947, to August 30, 1947, and as of the end of said period, which statement contained a purported Balance Sheet as of August 30, 1947, and a "Reconciliation of Net Profit as per Report with Final Adjusted Profit" for the said period which said statement of financial condition falsely created the illusion that the said restaurant enterprise was an *id*dependent entity owned and operated independently of the said defendants and from which statement of financial condition it falsely appeared that the said restaurant was operated under a bona fide lease; that certain sums of money had in good faith been paid out during the said period as rent; that the cash resources utilized for the operation of the said restaurant during the said period were fully identified, listed and summarized in the said statement; that the said restaurant operated during the said period at a profit; and that the summaries in the said statement of financial condition were related to [fol. 61] or derived from an actual audit of the books of the said restaurant;

Whereas, said statement of financial condition was false and untrue and the defendants knew it to be false and untrue; in fact, the restaurant enterprise was not an independent enterprise but had been knowingly created for the personal financial benefit of the defendants; there was no bona fide lease of the restaurant for said period; sums paid out as rent had not been paid in good faith as rent; the cash resources utilized for the operation of the said restaurant and the sums disbursed for the account and operation of the said restaurant during the said period were not fully identified, listed and summarized; the said restaurant operated during the said period at a substantial loss; and no audit of the books of the said restaurant had been made or was in process on said date, all of which each of the defendants well knew;

And each of such particulars so misrepresented as aforesaid was a matter materially affecting the financial condition of the defendants and of the said Mike Urany;

And such statement of financial condition was compiled, prepared and issued, and was made by the defendants, as aforesaid, with the intent to conceal from the New York State Tax Commission and the Collector of Internal Revenue of the United States of America, as creditors for income tax purposes of the defendants and of Mike Urany, the individual in whose name the said restaurant was operated during the said period, and with the intent to conceal from said State Tax Commission and the said Collector of Internal Revenue and from the New York State Liquor Authority, all of whom were persons interested, the truth concerning each of the particulars so misrepresented as aforesaid.

[fol. 62]

Ninth Count

And the Grand Jury aforesaid by this Indictment further accuse said defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown, Charles Manney and Arrowhead, Inc., a corporation organized and existing under the laws of the State of New York, in the County of Saratoga, of the crime of Forgery in the Third Degree in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law, committed as follows:

On or about the 24th day of September, 1947, I. George Goldstein, acting in concert with and aided and abetted by the defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown, Charles Manney and Arrowhead, Inc., a corporation organized and existing under the laws of the State of New York, in the County of Saratoga, did wilfully omit material entries from a statement of financial condition with the intent to conceal from persons interested matters materially affecting the financial condition of certain individuals, in that on or about said date, the said defendants did by the hand of the said I. George Goldstein, compile, prepare and issue to a restaurant operated in the name of Mike Urany d/b/a Arrowhead Inn, under the date of September 24, 1947, a statement of financial condition of said Arrowhead Inn for the period August 4, 1947, to August 30, 1947, and as of the end of said period, which statement contained a purported

Balance Sheet as of August 30, 1947, and a "Reconciliation of Net Profit as per Report with Final Adjusted Profit" for the said period, from which there were wilfully omitted by the defendants, as aforesaid, from the schedule included in such report and entitled "Exhibit C, Analysis of Cash Disbursements", the following entries:

Entertainment—Salary of Carmen Miranda for one week	$10,000.00
Entertainment—Salary of Maurice & Maryea	500.00
Entertainment—Salary of Leo Reisman	3,090.00
Entertainment—Salary of Frank Marti	1,722.00
[fol. 63] Entertainment—Payroll	2,847.50

or, in the alternative, the aggregate entry as follows:

Entertainment	$18,159.50

by which omission or omissions the defendants intended to conceal the fact that the restaurant operated during the said period at a substantial loss.

The defendants were personally financially interested in the restaurant known as Arrowhead Inn, during the said period, and the fact so misrepresented and concealed as aforesaid, viz., that the said restaurant operated during the said period at a substantial loss was a matter materially affecting the financial condition of the said defendants and the said Mike Urany, and the defendants by said omission or omissions intended to conceal such fact from the New York State Liquor Authority which was a person interested in the financial condition of the said defendants and the said Mike Urany.

[fol. 64] Tenth Count

And the Grand Jury aforesaid by this Indictment further accuse said defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown, Charles Manney and Arrowhead, Inc., a corporation organized and existing under the laws of the State of New York, in the County of Saratoga, of the crime of Forgery in the Third Degree in violation of Paragraph 4 of the second Subdi-

vision of Section 889 of the Penal Law, committed as follows:

On or about the 24th day of September, 1947, I. George Goldstein, acting in concert with and aided and abetted by the defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown, Charles Manney and Arrowhead, Inc., a corporation organized and existing under the laws of the State of New York, in the County of Saratoga, did make a false entry or false entries in a statement of financial condition with intent to defraud creditors, in that on or about said date, the said defendants did by the hand of I. George Goldstein compile, prepare and issue to a restaurant operated in the name of Mike Urany d/b/a Arrowhead Inn, under the date of September 24, 1947, a statement of financial condition of said Arrowhead Inn for the period August 4, 1947, to August 30, 1947, and as of the end of said period, which statement contained a purported Balance Sheet as of August 30, 1947, and a "Reconciliation of Net Profit as per Report with Final Adjusted Profit" for the said period, wherein were contained the following entries which were false and untrue and were known by the defendants to be false and untrue;

Balance Sheet—August 30, 1947

Capital:	
Original Investment	$11,000.00

Reconciliation of Bet Profit as Per Report With Final Adjusted Profit for the Period August 4, 1947 to August 30, 1947

Adjusted Balance Sheet

Capital:	
Original Investment	$11,000.00
Add: Net Profit for the Period	1,706.40
[fol. 65] Total	$12,706.40
Less: Drawings	9,127.36
Capital—August 30, 1947	$ 3,579.04

by which entries the defendants intended falsely to represent that Mike Urany had invested the sum of eleven thousand dollars ($11,000) in the said restaurant for the said period of operation, and that the said Mike Urany had on or before the date of said Statement and Reconciliation of Ne- Profits, etc., withdrawn nine-thousand, one-hundred and twenty-seven and 36/100 dollars ($9,127.36) of such original investment;

Whereas, in f-ct, the said Mike Urany had no investment whatsoever in the said restaurant for the said period of operation, and the said sum of nine-thousand, one-hundred and twenty-seven and 36/100 dollars ($9,127.36) was not withdrawn by or paid to the said Mike Urany or by or to anyone claiming to have an investment direct or indirect in the said restaurant, all of which the said defendants well knew;

And such false entries so made as aforesaid were made by the defendants with the intent to defraud the New York State Tax Commission and the Collector of Internal Revenue of the United States of America who were creditors for income tax purposes of the defendants and of Mike Urany, with the intent that the said entry or entries should be believed, relied upon, and adopted by those preparing the income tax returns to be filed by the defendants and by the said Mike Urany, to the detriment of the State of New York and the United States of America, and with the intent that they should be believed and relied upon by the agents of the said State Tax Commission and Collector of Internal Revenue.

[fol. 66] Eleventh Count

And the Grand Jury aforesaid by this Indictment further accuse said defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown, Charles Manney and Arrowhead, Inc., a corporation organized and existing under the laws of the State of New York, in the County of Saratoga, of the crime of Forgery in the third degree in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law, committed as follows:

On or about the 24th day of September, 1947, I. George Goldstein, acting in concert with and aided and abetted by

the defendants Meyer Lansky, Joseph Stacher, James Lynch, Herman Weiner, George Brown, Charles Manney and Arrowhead, Inc., a corporation organized and existing under the laws of the State of New York, in the County of Saratoga, did make a false entry or false entries in a statement of financial condition with the intent to conceal from creditors and other persons interested matters materially affecting the financial condition of certain individuals, in that on or about said date, the said defendants did by the hand of I. George Goldstein compile, prepare and issue to a restaurant operated in the name of Mike Urany d/b/a Arrowhead Inn, under the date of September 24, 1947, a statement of financial condition of said Arrowhead Inn for the period August 4, 1947 to August 30, 1947, and as of the end of said period, which statement contained a purported balance sheet as of August 30, 1947, and a "Reconciliation of Net Profit as Per Report With Final Adjusted Profit" for the said period, wherein were contained the following entries which were false and untrue and were known by the defendants to be false and untrue:

Balance Sheet—August 30, 1947

Capital:	
Original Investment	$11,000.00

Reconciliation of net profit as per report with final adjusted profit for the period August 4, 1947 to August 30, 1947

Adjusted Balance Sheet

Capital:	
Original Investment	$11,000.00
[fol. 67] Add: Net profit for the period	1,706.40
Total	$12,706.40
Less: Drawings	9,127.36
Capital—August 30, 1947	$ 3,579.04

by which entries the defendants intended falsely to represent that Mike Urany had invested the sum of eleven thousand dollars ($11,000) in the said restaurant for the said

period of operation, and that the said Mike Urany had on or before the date of said Statement and Reconciliation of Net Profit, etc., withdrawn nine-thousand, one-hundred and twenty-seven and 36/100 dollars ($9,127.36) of such original investment;

Whereas, in fact, the said Mike Urany had no investment whatsoever in the said restaurant for the said period of operation, and the said sum of nine-thousand, one-hundred and twenty-seven and 36/100 dollars ($9,127.36) was not withdrawn by or paid to the said Mike Urany or by or to anyone claiming to have an investment direct or indirect in the said restaurant, all of which the said defendants well knew;

And each of the particulars so misrepresented as aforesaid was a matter materially affecting the financial condition of the defendants and of the said Mike Urany:

And such entry or entries were made by the defendants, as aforesaid, with the intent to conceal from the New York State Tax Commission and the Collector of Internal Revenue of the United States of America, as creditors for income tax purposes of the defendants and of Mike Urany, the individual in whose name the said restaurant was operated during the said period, and with the intent to conceal from said State Tax Commission and the said Collector of Internal Revenue and from the New York State Liquor Authority, all of whom were persons interested, the truth concerning each of the particulars so misrepresented as aforesaid.

[fol. 68] Twelfth Count

And the Grand Jury aforesaid, by this Indictment further accuse the defendant Herman Weiner of the crime of forgery in the third degree, in violation of Paragraph 4 of the second subdivision of Section 889 of the Penal Law, committed as follows:

On or about the 7th day of August, 1946, the defendant, acting in concert with and aided and abetted by Meyer Lansky, Joseph Stacher, James Lynch and Charles Manney, made a false account with intent to defraud creditors, in that, on or about said date, in the County of Saratoga, the defendant signed a signature card at the Saratoga Na-

tional Bank in the name of Joseph A. Bond and opened a checking account at the said Bank in the name of Joseph A. Bond, by which signature card and account the said defendant falsely represented that the name Joseph A. Bond was his own name and that the moneys deposited in and withdrawn from the said checking account were the property of the said defendant;

Whereas, in fact, the defendant's name was not Joseph A. Bond, the name Joseph A. Bond was a fictitious name and the moneys deposited in and withdrawn from the said checking account were not the property of the said defendant, but were the proceeds of gambling conducted in the gambling casino operated adjacent to the restaurant known as Arrowhead Inn, and were the property of a person or persons to the Grand Jury aforesaid unknown, all of which the defendant well knew;

And the said checking account was made, opened and maintained by the defendant, as aforesaid, with the intent to defraud the New York State Tax Commission and the Collector of Internal Revenue of the United States of America who were creditors for income tax purposes of the defendant and of the person or persons constituting the owner or owners of the moneys deposited and withdrawn from the said checking account, and with the intent that the misrepresentations aforesaid should be believed and relied upon by the agents of the said State Tax Commission and [fol. 69] the Collector of Internal Revenue, to the detriment of the State of New York and the United States of America.

The defendant Herman Weiner was not an inhabitant of or usually or publicly a resident within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least fourteen (14) months duration since the date of the commission of the crime alleged in this Twelfth Count of this Indictment, viz., the 7th day of August, 1946, in that the said defendant during such period was regularly and continuously a resident in the State of Florida.

[fol. 70] Thirteenth Count

And the Grand Jury aforesaid, by this Indictment further accuse the defendant Herman Weiner of the crime of for-

gery in the third degree, in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law, committed as follows:

On or about the 7th day of August, 1946, the defendant, acting in concert with and aided and abetted by Meyer Lansky, Joseph Stacher, James Lynch and Charles Manney, made a false account with intent to conceal a crime or crimes, to wit, the crime of gambling and the crime of owning and operating a gambling establishment in violation of Sections 970 and 973, respectively, in that on or about said date in the County of Saratoga, the defendant signed a signature card at the Saratoga National Bank in the name of Joseph A. Bond and opened a checking account at the said bank in the name of Joseph A. Bond, by which signature card and account the said defendant falsely represented that the name Joseph A. Bond was his own name and that the moneys deposited in and withdrawn from the said checking account were the property of the said defendant.

Whereas, in fact, the defendant's name was not Joseph A. Bond, the name Joseph A. Bond was a fictitious name and the moneys deposited in and withdrawn from the said checking account were not the property of the said defendant, but were the proceeds of gambling conducted in the gambling casino operated adjacent to the restaurant known as Arrowhead Inn, and were the property of a person or persons to the Grand Jury aforesaid unknown; gambling at the Arrowhead Inn Gambling Casino was conducted daily throughout the month of August, 1946, exclusive of Sundays, in violation of Sections 970 and 973 of the Penal Law; certain of the moneys gambled by bettors at said Casino were represented by bank checks; and the maintenance of [fol. 71] a checking account for the collection of such bank checks in a name not known or generally reputed to be associated with the said Arrowhead Inn concealed the connection between such moneys and any alleged gambling activities at the said Casino, and concealed the fact of the gambling activities represented by such bank checks.

The defendant Herman Weiner was not an inhabitant of or usually or publicly a resident within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for

a period of at least fourteen (14) months' duration since the date of the commission of the crime alleged in this Thirteenth Count of this Indictment, viz., the 7th day of August, 1946, in that the said defendant during such period was regularly and continuously a resident in the State of Florida.

[fol. 72] Fourteenth Count

And the Grand Jury aforesaid by this Indictment further accuse the defendant Herman Weiner of the crime of Gambling in violation of Section 970 of the Penal Law, committed as follows:

On or about the 5th day of August, 1946, the defendant acting in concert with and aided and abetted by Charles Manney, John Coakley and others to the Grand Jury aforesaid unknown, in the County of Saratoga, was the owner, agent or superintendent of a place for gambling, to wit, a certain building and casino adjacent to a certain restaurant known as Arrowhead Inn, in which daily during the month of August, 1946, exclusive of Sundays, and, specifically, on the date aforesaid, the said defendant and those hereinabove named as aiders and abettors operated and conducted for their personal gain games of chance including those games commonly known as roulette, chemin de fer, bird cage and craps.

The defendant was not an inhabitant of or usually or publicly a resident within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least five (5) years duration since the date of the commission of the crime alleged in this Fourteenth Count of this Indictment, viz., the 5th day of August, 1946, in that the said defendant during such period was regularly and continuously a resident in the State of Florida.

[fol. 73] Fifteenth Count

And the Grand Jury aforesaid by this Indictment further accuse the defendant Herman Weiner of the crime of Gambling in violation of Section 970 of the Penal Law, committed as follows:

On or about the 10th day of August, 1946, the defendant acting in concert with and aided and abetted by Charles Manney, John Coakley and others to the Grand Jury afore-

said unknown, in the County of Saratoga, was the owner, agent or superintendent of a place for gambling, to wit, a certain building and casino adjacent to a certain restaurant known as Arrowhead Inn, in which daily during the month of August, 1946, exclusive of Sundays, and, specifically, on the date aforesaid, the said defendant and those hereinabove named as aiders and abettors operated and conducted for their personal gain games of chance including those games commonly known as roulette, chemin de fer, bird cage and craps.

The defendant was not an inhabitant of or usually or publicly a resident within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least five (5) years duration since the date of the commission of the crime alleged in this Fifteenth Count of this Indictment, viz., the 10th day of August, 1946, in that the said defendant during such period was regularly and continuously a resident in the State of Florida.

[fol. 74] Sixteenth Count

And the Grand Jury aforesaid, by this Indictment further accuse the defendant Herman Weiner of the crime of Owning and Operating a Gambling Establishment, in violation of Section 973 of the Penal Law, committed as follows:

On or about the 5th day of August, 1946, the defendant, acting in concert with and aided and abetted by Charles Manney, John Coakley and others to the Grand Jury aforesaid unknown, did, in the County of Saratoga, keep a certain building and casino, adjacent to a certain restaurant known as Arrowhead Inn, used for gambling, and games of chance were conducted therein daily during the month of August, 1946, exclusive of Sundays, and, specifically, on the date aforesaid, for the personal gain of the said defendants and of those hereinabove named as aiders and abettors, including those games of chance commonly known as roulette, chemin de fer, bird cage and craps.

The defendant was not an inhabitant of or usually or publicly a resident within the State of New York, or

usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least five (5) years duration since the date of the commission of the crime alleged in this sixteenth Count of this Indictment, viz., the 5th day of August, 1946, in that the said defendant during such period was regularly and continuously resident in the State of Florida.

[fol. 75] Seventeenth Count

And the Grand Jury aforesaid, by this Indictment, further accuse the defendant Herman Weiner of the crime of Owning and Operating a Gambling Establishment, in violation of Section 973 of the Penal Law, committed as follows:

On or about the 10th day of August, 1946, the defendants acting in concert with and aided and abetted by Charles Manney, John Coakley, and others to the Grand Jury aforesaid unknown, did, in the County of Saratoga, keep a certain building and casino adjacent to a certain restaurant known as Arrowhead Inn, used for gambling, and games of chance were conducted therein daily during the month of August, 1946, exclusive of Sundays, and, specifically, on the date aforesaid, for the personal gain of the said defendants and of those hereinabove named as aiders and abettors, including those games of chance commonly known as roulette, chemin de fer, bird cage and craps.

The defendant was not an inhabitant of or usually or publicly a resident within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least five (5) years duration since the date of the commission of the crime alleged in this Seventeenth Count of this Indictment, viz., the 10th day of August, 1946, in that the said defendant during such period was regularly and continuously resident in the State of Florida.

[fol. 76] Eighteenth Count

And the Grand Jury aforesaid by this Indictment further accuse the defendants Herman Weiner and George

Brown, of the crime of Gambling in violation of Section 970 of the Penal Law, committed as follows:

On or about the 9th day of August, 1947, the defendants acting in concert with and aided and abetted by Meyer Lansky, Joseph Stacher, James Lynch and Charles Manney, in the County of Saratoga, were owners, agents or superintendents of a place for gambling, to wit, a certain building and casino adjacent to a certain restaurant known as Arrowhead Inn, in which daily during the month of August, 1947, exclusive of Sundays, and, specifically, on the date aforesaid, the said defendants and those hereinabove named as aiders and abettors operated and conducted for their personal gain games of chance including those games commonly known as roulette, chemin de fer, bird cage and craps.

The defendants were not inhabitants of or usually or publicly residents within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least four (4) years duration since the date of the commission of the crime alleged in this Eighteenth Count of this Indictment, viz., the 9th day of August, 1947, in that the said defendants during such period were regularly and continuously residents in the State of Florida.

[fol. 77] Nineteenth Count

And the Grand Jury aforesaid by this Indictment further accuse the defendants Herman Weiner and George Brown, of the crime of Gambling in violation of Section 970 of the Penal Law, committed as follows:

On or about the 27th day of August, 1947, the defendants acting in concert with and aided and abetted by Meyer Lansky, Joseph Stacher, James Lynch and Charles Manney, in the County of Saratoga, were owners, agents or superintendents of a place for gambling, to wit, a certain building and casino adjacent to a certain restaurant known as Arrowhead Inn, in which daily during the month of August, 1947, exclusive of Sundays, and, specifically, on the date aforesaid, the said defendants and those hereinabove named as aiders and abettors operated and conducted for their

personal gain games of chance including those games commonly known as roulette, chemin de fer, bird cage and craps.

The defendants were not inhabitants of or usually or publicly residents within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least four (4) years duration since the date of the commission of the crime alleged in this Nineteenth Count of this Indictment, viz., the 27th day of August, 1947, in that the said defendants during such period were regularly and continuously residents in the State of Florida.

[fol. 78] Twentieth Count

And the Grand Jury aforesaid, by this Indictment further accuse the defendants Herman Weiner and George Brown of the crime of Owning and Operating a Gambling Establishment, in violation of Section 973 of the Penal Law, committed as follows:

On or about the 9th day of August, 1947, the defendants acting in concert with and aided and abetted by Meyer Lansky, Joseph Stacher, James Lynch, Charles Manney and Arrowhead, Inc., a corporation organized and existing under the laws of the State of New York, did, in the County of Saratoga, keep a certain building and casino adjacent to a certain restaurant known as Arrowhead Inn, used for gambling, and games of chance were conducted therein daily during the month of August, 1947, exclusive of Sundays, and, specifically, on the date aforesaid, for the personal gain of the said defendants and of those hereinabove named as aiders and abettors, including those games of chance commonly known as roulette, chemin de fer, bird cage and craps.

The defendants were not inhabitants of or usually or publicly residents within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least four (4) years duration since the date of the commission of the crime alleged in this Twentieth Count of this Indictment, viz., the 9th day of August, 1947, in that the

said defendants during such period were regularly and continuously residents in the State of Florida.

[fol. 79] Twenty-First Count

And the Grand Jury aforesaid, by this Indictment further accuse the defendants Herman Weiner and George Brown of the crime of Owning and Operating a Gambling Establishment, in violation of Section 973 of the Penal Law, committed as follows:

On or about the 27th day of August, 1947, the defendants acting in concert with and aided and abetted by Meyer Lansky, Joseph Stacher, James Lynch, Charles Manney, and Arrowhead, Inc., a corporation organized and existing under the laws of the State of New York, did, in the County of Saratoga, keep a certain building and casino adjacent to a certain restaurant known as Arrowhead Inn, used for gambling, and games of chance were conducted therein daily during the month of August, 1947, exclusive of Sundays, and, specifically, on the date aforesaid, for the personal gain of the said defendants and of those hereinabove named as aiders and abettors, including those games of chance commonly known as roulette, chemin de fer, bird cage and craps.

The defendants were not inhabitants of or usually or publicly residents within the State of New York, or usually or publicly in personal attendance upon business or employment within the State of New York for a period of at least four (4) years duration since the date of the commission of the crime alleged in this Twenty-First Count of this Indictment, viz., the 27th day of August, 1947, in that the said defendants during such period were regularly and continuously residents in the State of Florida.

[fols. 80-81] All of the acts and transactions alleged in the several Counts of this Indictment are connected together and constituted parts of a common scheme and plan.

Nathaniel L. Goldstein, Attorney General of the State of New York, By /S/ Paul W. Williams, Special Assistant Attorney General.

[fol. 82] In the Matter of An Application to the Honorable Thomas E. Dewey, Governor of the State of New York, for a Requisition Upon the Honorable Charles H. Russell, Governor of the State of Nevada, for the Return of Joseph Stacher (alias Doc Stacher, Doc Harris, Doc Rosen and Joe Rosen), a Fugitive from Justice

State of New York,
County of Saratoga, ss.:

Joseph Folts, being duly sworn, deposes and says:

That he resides at 10 Ritchie Place, Saratoga Springs, New York. That he is 50 years of age and has resided in Saratoga Springs all his life. That for the past 30 years he has been an employe of the State of New York and has been employed at the Roosevelt Baths in the City of Saratoga Springs since 1936.

That during the years 1946, 1947 and 1948 he was a supervising attendant at the Roosevelt Baths. That the Roosevelt Baths are maintained by the State of New York and is a place where people come to bathe in the mineral waters that are common in this area, and for massage.

That as supervising attendant he was in direct charge of the assignment of male customers at the Roosevelt Baths to the rooms where the baths and massages were taken. That he is well-acquainted with Joseph Stacher and can state that the photograph of the individual containing the name, "Joe Rosen, FBI 504 798 (1924) K6591", which is a full-face and side-view photograph. The full-view photo showing the subject of the photograph wearing a cap and having the number "8751" on his left shoulder lapel is *is* identical with Joseph Stacher. That the photograph is a good likeness of Stacher as he was in 1947, except for the fact that Joseph Stacher in 1947 had less hair than is [fol. 83] shown in the photo.

That the said Joseph Stacher came to the Roosevelt Baths for baths and massage in 1946, in 1947 and in 1948. That the customary procedure was for Mr. Stacher to purchase a ticket from the receptionist, Helen Tracy. That Mr. Stacher would bring the ticket to your deponent, who would thereupon assign Mr. Stacher to a room and a masseur.

That Mr. Stacher was ordinarily assigned to one Alfred Hodebourg. That Stacher was a very well dressed individual, very considerate of the employes and of Alfred Hodebourg in particular. That he always conducted himself in a very gentlemanly manner and was well-liked by the employes of the Roosevelt Baths.

That he recalls and can state as a fact that the said Joseph Stacher was at the Roosevelt Baths for treatment in the months of June, July, August and in the early part of September, of 1947.

That this statement is given freely and voluntarily.

Joseph A. Folts /S/.

Subscribed and sworn to before me this 4th day of November, 1952.

William F. Fischer /s/, Special Assistant Attorney General of the State of New York.

[fol. 84] In the Matter of An Application to the Honorable Thomas E. Dewey, Governor of the State of New York, for a Requisition Upon the Honorable Charles H. Russell, Governor of the State of Nevada, for the Return of Joseph Stacher (alias Doc Stacher, Doc Harris, Doc Rosen and Joe Rosen), a Fugitive from Justice

State of New York,
County of Saratoga, ss.:

Helen E. Tracy, being duly sworn, deposes and says:

That she resides at 35 Chapman Street, Ballston Spa, New York. That she is 62 years of age and has resided in the City of Saratoga Springs since her birth until 1916 and, thereafter in the Town of Ballston Spa, New York.

That for the past seven years she has been an employe of the State of New York and has been employed at the Roosevelt Baths in the City of Saratoga Springs since 1945. That during the years 1946, 1947, and 1948, she was a cashier at the Roosevelt Baths. That the Roosevelt Baths are maintained by the State of New York and is a place where people come to bathe in the mineral waters that are common in this area, and for massage.

That as cashier of the Roosevelt Baths, she made all appointments for baths; that she issued all tickets to all customers who desire to take the baths and massages. That in the ordinary course of her duties she became acquainted with Joseph Stacher, and can state that the photograph of the individual containing the name, "Joe Rosen, FBI 504 798 (1924) K 6591", which is a full-face and side-view photograph (the full-view photograph showing the subject wearing a cap and having the number 8751 on his left [fol. 85] shoulder lapel) is Joseph Stacher. That from the aforementioned photograph, Joseph Stacher can be readily identified as he was in 1947, except for the fact that Stacher in 1947 had less hair and was older and better dressed.

That the said Joseph Stacher came to the Roosevelt Baths in 1946, in 1947, and in 1948. That the customary procedure was for Mr. Stacher to purchase a ticket from your deponent, Helen E. Tracy, and Stacher would pay cash for himself and, on many occasions, for people accompanying him into the Baths.

In the ordinary course of business, your deponent kept certain records upon a form provided by the State of New York, upon which form she entered the names of the individuals who had made appointments for the particular day in question. A new form was used each day. As the customer for whom an appointment was made kept the appointment and purchased his or her ticket from deponent, she would put a checkmark opposite the name of the customer to indicate that he or she had kept the appointment. At the conclusion of the season's business, these forms are bound according to the month, and are retained at the office. Your deponent has reviewed her records for the year of 1947, and can state, as follows: Joseph Stacher, who your deponent has previously identified as being identical with Joe Rosen, FBI 504-798, on the basis of the photograph of the said Joe Rosen, made appointments with her and purchase- bath and massage tickets from her during the aforesaid months of June, July, August and September, of 1947.

The records for these months indicate that Joseph

Stacher, also known as Joe Rosen, purchased tickets from your deponent and took the baths on the following dates:

[fols. 86-87] June 16, June 17, June 18, June 20, June 21, June 26, June 27, June 28;

July 3, July 5, July 7, July 8, July 9, July 10, July 12, July 18, July 19, July 21, July 25, July 26, July 27, July 29, July 30;

August 2, August 7, August 8, August 9, August 10, August 12, August 13, August 14, August 15, August 19, August 23, August 25, August 27;

September 4, September 5, September 6.

That this statement is given freely and voluntarily.

Helen E. Tracy /s/.

Subscribed and sworn to before me this 5th day of November, 1952.

William F. Fischer /s/, Special Assistant Attorney General of the State of New York.

[fol. 88] EXHIBIT B

This Agreement, made the 5th day of May, in the year 1947, between Dorothy E. Wait, of the City of Saratoga Springs, N. Y., of the first part, hereafter called the Landlord, and Joseph Stacher, of Newark, N. J., of the second part, hereafter called the tenant, Witnesseth that the landlord has agreed to demise and lease, and hereby does demise and lease, and the tenant has agreed to take, and hereby does take the house and premises of the party of the first part, known as No. 658 North Broadway, in the City of Saratoga Springs, N. Y., together with the garage and grounds connected therewith, and certain furniture and personal property in and about said house and premises for the term of two and one-half months to commence on the 15th day of June, A. D., 1947, and to end on the 1st day of September, A. D., 1947 and the said tenant hereby covenants and agrees to pay unto the said landlord the total rent or sum of Six thousand 00/100 ($6,000) Dollars, payable as follows: $2,000. upon the signing and delivery of this lease, and $4,000. on the 15th day of June, 1947. At William H. Moran's Offices, 374 Broadway, in the City of

Saratoga Springs, N. Y., and to quit and surrender the premises to said landlord, together with all repairs, additions and improvements made by said tenant thereon, at the expiration of the said term in as good state and condition as reasonable use and wear thereof will permit, damages by the elements excepted. This lease and tenancy are upon the express condition that the demised premises are to be used as a private family dwelling and for no other purpose. And the tenant further covenants not to assign, let or underlet, the whole or any part of the said premises, without the written consent of the landlord, under penalty of forfeiture and damages—and that tenant will not occupy the said premises, nor permit the same to be occupied for any business deemed extra hazardous, without the like consent, under the like penalty; and also if the said premises, or any part thereof, shall become vacant during the said term, the landlord may re-enter the same either by force or otherwise, without being liable to any prosecution therefor, and relet the said premises as the agent of the tenant, and receive the rent thereof, applying the same first to the payment of such expenses as landlord may be put to in re-entering, and then to the payment of the rent due by these presents; and the balance (if any) to be paid over to the tenant.

[fol. 89] In case of fire, so that the demised premises shall become untenantable, this lease shall terminate upon the tenant paying to landlord a proportionate amount of the rent to the time of such fire. In case rent is paid in advance by tenant, and tenant is obliged thereafter to vacate said demised premises on account of such fire, landlord shall return to tenant a ratable proportion of the rent paid.

The tenant shall keep and observe all corporation ordinances relating to said premises or appurtenances. The landlord and the landlord's agents may at all reasonable times freely enter upon said premises to inspect the same, and may protect the same by making repairs thereon, or otherwise, the tenant hereby agreeing to pay on demand the cost of any repairs which by this agreement tenant may be bound to perform.

The landlord will put the plumbing upon said demised

premises in good condition and reset any broken glass, and shall so deliver the premises to said tenant who thereafter, and during the term of this lease, shall keep said plumbing in order and reset any glass broken and, on or before the expiration of said term, said tenant hereby covenants and agrees to remove from said premises all ashes and other refuse made or brought upon said premises during the term of this lease. Tenant further agrees to make all minor and incidental repairs that may be necessary, such as packing a faucet, regulating a valve, fixing a lock, supplying keys and trivial carpenter work. All important repairs, that may be necessary, such as renewing important plumbing, lighting or heating fixtures, the necessity for which was caused by no act or neglect of tenant, also repairs to the roofs, structural and outside repairs shall be made by landlord. It is understood that said tenant shall not be responsible for sewer, water and gas pipes outside the buildings and shall not be liable for repairs that may become necessary thereto during the term of this lease, unless after such repairs have been made it shall appear that the necessity for making them was caused by some act or neglect of the tenant, but, in that case, tenant agrees on demand to pay to said landlord the cost of the same.

Said tenant shall care for the grounds and keep the gutters and sidewalks adjoining said premises free from accumulations of dirt. Landlord reserves the right to show the house at reasonable times, to persons proposing to purchase or rent, such persons to be accompanied by said landlord or the agent of said landlord.

In case personal property is included in this lease, the tenant covenants that no part thereof shall be removed from the demised premises, and that said tenant will restore all articles lost, destroyed or broken. It is agreed that when landlord delivers possession to tenant, the ground shall be in good order and will be kept in good condition by said tenant and the house clean throughout, and generally in condition for immediate occupation and that when said tenant leaves said house it shall be left in the same condition as to cleanliness; and said tenant agrees that any amount paid by said landlord to properly clean said house after the same is vacated and also to put the

grounds in the same order in which they were delivered to said tenant shall, on demand, be paid to said landlord, but, any claim in pursuance of the foregoing provisions, to [fol. 90] be operative must be made within one month after tenant surrenders possession.

It is understood that the demised premises are rented as a furnished cottage and that the dwelling is to be supplied with all the furniture and equipment necessary for immediate housekeeping, including mattress pad, spread and pair of blankets for each bed, bed room, dining room and kitchen crockery, china, glassware and kitchen utensils, in such quantity and of such quality as would be considered reasonable and suitable for the house; and landlord shall be expected to provide towels, bedroom and table linen, and cutlery.

Tenant further covenants and agrees to pay said landlord, upon demand, if telephone is left in the house all exchange and toll charges, also whatever amount landlord shall be charged or called upon to pay for gas and electricity consumed on the demised premises during the term hereof.

The said tenant further agrees not to permit the water to run to waste or use a larger quantity than is necessary, and will immediately report to said landlord any leaks in the water pipes that might increase the flow of water through the meter, and generally, any leaks in the water, gas and sewer pipes throughout the buildings or grounds and any leaks in the roofs or any other damage that may occur to the buildings or ground that might require the prompt attention of the landlord.

This lease has been negotiated and closed by the parties through the Real Estate Brokerage Offices of William H. Moran, and it is understood and agreed by the parties with William H. Moran that any future leases of the same property between the landlord and the same tenant shall be considered to have been concluded through the same agency.

If any of the foregoing agreements or conditions are broken by the tenant, this lease, and the interest and the estate hereby created in the tenant, are thereby forfeited to the landlord, who is entitled to the immediate possession of the premises as fully and effectually as if this lease had

not been executed, and said landlord is at liberty to take summary proceedings to remove the tenant and recover possession as in case of non-payment of rent. And it is further agreed, that if the lease is thus forfeited, the tenant shall pay the full amount of rent remaining unpaid, as liquidated damages.

This lease and tenancy shall not become operative until all rent reserved in, and all the terms, covenants and conditions of, any prior lease, existing between the same parties for the same premises, shall have been fully paid and performed; and the cancellation of any such prior lease shall, at the election of the landlord, be a cancellation hereof and make the same void and of no effect.

In Witness Whereof, the parties to these presents have hereunto set their hands and seals the day and year first above written in duplicate.

Sealed and delivered in presence of:

Mrs. Dorothy E. Wait (Seal), X Mrs. Joseph Stacher (Seal), —— —— (Seal).

FEDERAL BUREAU OF INVESTIGATION

WASHINGTON, D. C. EXHIBIT C.

TO: Mr. Thomas B. Gilchrist, Jr.
Special Assistant Attorney General
Department of Law
Ballston Spa, New York

Date 6-20-52

RE: Your inquiry dated 6-2-52 concerning MEYER LANSKY, JOSEPH STACHER, HERMAN WEINER, JACK LANSKY and FRANK COSTELLO.

_____subject of attached record identical

__X__subjects of attached records may be identical

_____subject in whom you are interested may be identical with one of the subjects whose records are attached

_____only record available attached

_____fingerprint files fail to disclose

_____additional information requested

_____information being furnished as indicated

__X__enclosures (26)

__X__attached are the only photographs available. Fingerprints.

_____communication is returned herewith

_____this matter is receiving attention and you will be advised at an early date

_____information being under separate cover

__X__This supplements Bureau letter dated 6-11-52.

J. Edgar Hoover

JOHN EDGAR HOOVER
Director

74

Federal Bureau of Investigation

1902.M.W. Washington 25, D. C. 6-20-52 4577 mr

J. Edgar Hoover
Director

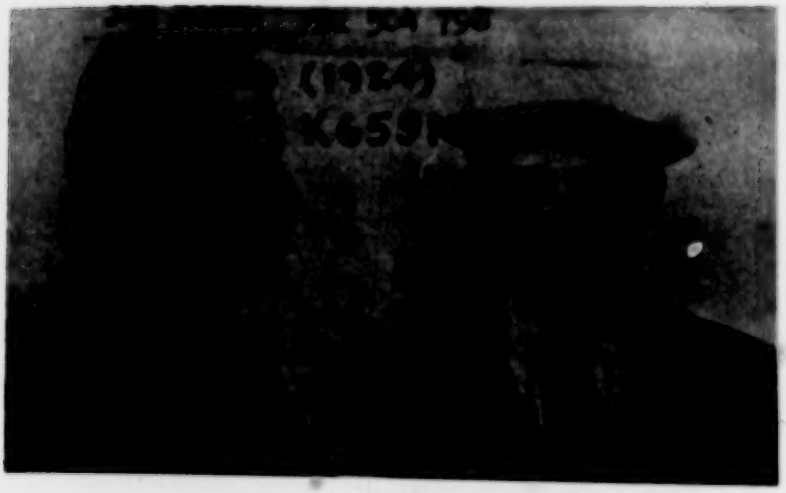
504798

The following FBI record, NUMBER, is furnished for OFFICIAL USE ONLY

Contributor of Fingerprints	Name and number	Arrested or received	Charge	Disposition
PD, Newark, N.J.	Joe Rosen, #8751	11/26/24	B.E.L.	dism. by G.J.
PD, NYC., N.Y.	Joseph Rosen, #E-8391	11/11/31	Sec. 722 P.L.D.C.	disch.by Mag. Crt.
Army	Joseph Stacher, #32557749	9/23/42 Newark NJ		

Notations indicated by * ARE NOT BASED ON FINGERPRINTS IN FBI files. The notations are based on data furnished this Bureau concerning individuals of the same or similar names or aliases and ARE LISTED ONLY AS INVESTIGATIVE LEADS.

92



92a

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FEDERAL BUREAU OF INVESTIGATION

Washington 25, D. C.
J. Edgar Hoover
Director.

504798

The following FBI record, NUMBER ____, is furnished FOR OFFICIAL USE ONLY.

Contributor of Fingerprints	Name and Number	Arrested or received	Charge	Disposition

* Arr. PD, Newark, N.J., 4/21/26, larceny by trick; 4/22/26 disch.
* Arr. PD, Newark, N.J. 8/18/26, A. and B.; 8/20/26, compl. dism.
* Arr. PD, Newark, N.J., 6/7/27, atrocious A. and B. (2 charges) 7/8/27 complaint withdrawn.
* Arr. PD, Newark, N.J., 7/11/27, atrocious A. and B.; 7/18/27, paroled for Grand Jury - dismissed by April term of Grand Jury.
* 8/15/27, PD, Newark, N.J., robbery; 8/15/27, held in $500 bail for Grand Jury; 11/9/27 nolle prossed.
* 12/4/27, PD, Newark, N.J., interfering with an officer (guarding a still from Fed. Auth.) 12/5/27 adjourned.
* 12/9/27, PD, Newark, N.J., atrocious A. and B.; 12/14/27, fined $50,000 (paid).
* 5/29/28, PD, Newark, N.J., chg. open; 6/8/28, dism. no formal complaint.
* 11/5/30 PD, Newark, N.J., atro. A. and B.; 11/5/30, turned over to the Essex Co. Pros. Off.; case dism. by Sept. term G.J.

Notations indicated by * ARE NOT BASED ON FINGERPRINTS IN FBI files. The notations are based on data furnished this Bureau concerning individuals of the same or similar names or aliases and ARE LISTED ONLY AS INVESTIGATIVE LEADS.

FEDERAL BUREAU OF INVESTIGATION
Washington 25, D.C.

504 798

J. Edgar Hoover
Director

The following FBI record,NUMBER ,is furnished FOR OFFICIAL USE ONLY

Contribution of Fingerprints	Name and number	Arrested or received	Charge	Disposition

Description

Color: White
Sex: male
Birthplace: Russia
Date of birth: September 19, 1902
September 19, 1901
Height: 5 feet 7 inches
Weight: 170 pounds
Hair: brown
Eyes: brown
Complexion: medium
Citizenship: U.S.A.
Build: medium
Address: in 1950 - Box 1 Greenfield, Reno, Nevada

Company: in 1950, Hotel Golden, as on print #16726

"In view of the fact that no fingerprints or identifying number, such as FBI number or police record number, accompanied your request, this Bureau cannot guarantee in any manner that this record is identical with the individual in whom you are interested."

Notations indicated by * ARE NOT BASED ON FINGERPRINTS IN FBI files. The notations are based on data furnished this Bureau concerning individuals of the same or similar names or aliases and ARE LISTED ONLY AS INVESTIGATIVE LEADS.

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(STACHER, JOE)

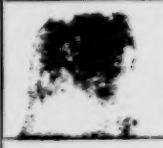
UNITED STATES ARMY
PERSONAL IDENTIFICATION

Name Stacher Joseph (None)
(Surname) (Given name) (Middle name)
(Please type or print plainly)

Classification 1 I 29 W I 00 18
0187 OI

Color White Sex Male Reference

RIGHT HAND

1. Thumb	2. Index finger	3. Middle finger	4. Ring finger	5. Little finger
				

LEFT HAND

6. Thumb	7. Index finger	8. Middle finger	9. Ring finger	10. Little finger

Impressions taken by:

Note: amputations

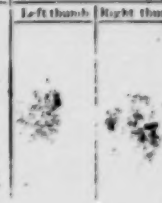
Signature:

Joseph Stacher

Four fingers taken simultaneously

Left Hand

Left thumb | Right thumb



Four fingers taken simultaneously

Right Hand

95-98

[fol. 97] PETITIONER'S EXHIBIT 1

Corporation Certificate

Filed January 12, 1953

F. D. Oldfield, County Clerk, By John Hamlyn, Deputy Clerk.

I, Barnet Sugarman do hereby certify as follows:

That Runyon Sales Co. of New York, Inc. is a corporation duly incorporated under the laws of the State of New York and that Mike Munves is the President, Abe Green is the Vice-President, Joseph Stacher is the Treasurer and Morris Rood is the auditor and I am the secretary of said corporation.

That the following is a true and correct copy of a resolution duly adopted at a meeting of the Board of Directors of said corporation duly called and regularly held on the *a* 9th day of August, 1946, at which a quorum was present, which resolution is in full force and effect.

"Resolved That"

1. Trade Bank and Trust Company, hereinafter referred to as the "Bank" be and hereby is designated as a depository of this corporation and that funds of this corporation deposited in said Bank be subject to withdrawal by checks, notes, drafts, bills of exchange, acceptances, orders or other instruments for the withdrawal of funds, when signed, made, drawn, accepted or endorsed on behalf of this corporation by any of the following officers, to wit:

By President and Auditor jointly. B. S., B. S., M. M., M. M.

2. Any of the foregoing Officers of the corporation is authorized to endorse any and all checks, notes, drafts, bills of exchange, acceptances, orders or other instruments to the order of the corporation and to receive the cash therefor.

3. Any of the Officers of this corporation is authorized to endorse any and all checks, notes or other instruments

wherein this corporation is the maker, payable to said Officer of this corporation, and to present the same for cash and to receive the cash therefor.

4. The said Bank is authorized to pay any commercial instrument and to receive the same for credit of or in payment from the payee or any other holder, without inquiring as to the circumstances of issue or disposition of proceeds, even if drawn to cash or bearer or the order of the corporation, endorsed by any of the foregoing Officers, or to the individual order of any signing Officer or tendered in payment of the individual obligation of any Officer of this corporation.

5. Any of the foregoing Officers of this corporation are hereby authorized to borrow money and to obtain credit for this corporation from said Bank on such terms as may seem to them advisable, and to make and deliver notes, drafts, acceptances, agreements and any other obligations of this corporation therefor in form satisfactory to said Bank, signed as designated in paragraph 1 above and as security therefor to pledge and trustee, withdraw, exchange and substitute any stocks, bonds, bills and accounts receivable, bills of lading, warehouse receipts or any other property of this corporation, with full authority to endorse or guarantee the same in the name of this corporation, to execute and deliver all instruments of assignment and transfer and to affix the corporate seal; and also to discount any bills receivable or paper of any kind (negotiable or otherwise) with full authority to endorse same in the name of this corporation.

6. Endorsements on behalf of this corporation upon any and all commercial paper of any kind deposited by or or behalf of this corporation with the said Bank for credit or for collection or otherwise, may be made by any one of the foregoing Officers, or by rubber stamp.

[fol. 98] 7. All the foregoing authorities shall be and continue in full force and effect until revoked or modified by written notice actually received by said Bank setting forth a resolution to that effect stated to have been adopted by the Board of Directors of this corporation, and signed by the secretary of this corporation and bearing this corporation's seal; and said Bank is hereby authorized and directed

to at all times rely upon the last notice received by it of any resolution as to the foregoing authorities and as to the persons who from time to time are its Officers, and their signatures, when such notice bears this corporation's seal and is signed by one purporting to be its secretary.

8. All items (other than cash) that may from time to time be credited to this corporation's account or received from it by said Bank, shall be subject to actual collection. Collection of such items by said Bank may be made by mailing the same to the Bank or person upon whom drawn or by whom signed, or through correspondents or other agencies, said Bank acting only as this correspondent's agent and its responsibility being limited to its own wilful misconduct and the exercise of reasonable care in the selection of its correspondents in cases where correspondents or other agencies are employed and shall not be liable for the negligence or misconduct of its correspondents and/or other agencies if due care is exercised in their selection.

I further certify that the foregoing resolutions are fully in accord and pursuant to the by-laws of said corporation.

I further certify the following are the signatures of the officers of said corporation:

/s/ Mike Munves, President, /s/ Barnet Sugarman, Sec., /s/ Abe Green, Vice-President, Barnet Sugarman, Secretary, /s/ Joseph Stacher, Treasurer.

/s/ Morris Rood, Auditor. (Seal of Corporation.)

In Witness Whereof, I have hereunto subscribed my name and affixed the seal of said corporation this 9th day of August, 1946.

/s/ Barnet Sugarman, Secretary.

"I hereby certify that the foregoing certificate is a true copy of resolutions regularly adopted by the corporation referred to and in the manner in said certificate stated, and I further certify that the signatures of the officers appearing in said certificate are the genuine signatures of such officers."

/s/ Mike Munves, President.

Dated August 9th, 1946.

[fol. 99] [File endorsement omitted.]

IN THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA, IN AND FOR WHITE PINE COUNTY

In the Matter of the Application of JOSEPH STACHER, for a Writ of Habeas Corpus

ORDER—January 19, 1953

Petitioner here sought Writ of Habeas Corpus on the 9th day of December, 1952. Information was furnished that proceedings on a Writ in Clark County has been dismissed and Bond of $5,000.00 ordered forfeit.

Alternate Writ was issued on the above date and Petitioner released on bond of $10,000.00. The Writ was made returnable December 22nd, 1952. Request was made by telephone from the Special Prosecutor in New York, for a continuance to the week of the 12th of January 1953, because of holiday and the difficulty connected with the attendance of proper officers and officials of New York. This was communicated immediately to Mr. Claiborne attorney for Petitioner, and on the 22nd day of December, 1952, Petitioner appeared with his attorney and stipulated with Mr. Jon Collins our District Attorney as attorney for Respondent, to the continuance to the 12th day of January, 1953, and the matter was so set and Petitioner remanded to his bail. Mr. George Dickerson, Deputy District Attorney for Clark County, though not an attorney of record, [fol. 100] was present in Court.

At the opening of the hearing on the 12th day of January, 1953, Mr. Dickerson presented his commission as Deputy Attorney General. Mr. Collins introduced and asked that William F. Fisher a New York Attorney and Special Assistant Attorney General of that state, be made an attorney of record and that Jack Streeter, Washoe County District Attorney, be admitted as Amicus Curiae, which was ordered.

Before proceeding on the hearing, Mr. Dickerson moved a dismissal on the grounds that jurisdiction remained in the Court in Clark County, and on the further ground that Petitioner had been not under legal restraint by reason of

the Gubernatorial Warrant, as claimed in the Petition. The Court denied the motion at that time and reserved a final ruling.

The thing which the Petitioner did, leaving his petition to be disposed of in his absence and filing an apparently duplicate petition in another Court is to be depreciated. However, at the time of the motion the demanding officers were in Court, the warrant was there, and the proceedings having been dismissed in Clark County, it was and is the opinion of this Court that the granting of the motion at such time would be tantamount to a denial of the right of Habeas Corpus. The motion is therefore denied.

This matter was most ably presented in a two and one-half day hearing of the forty-eight page, twenty-one count indictment, in which Petitioner was charged in thirteen counts.

We acknowledge beneficial assistance by District Attorney Streeter, Amicus Curiae.

Under the rules of law in New York, the indictment should set out the nature and purpose of a conspiracy, charged in terms sufficiently clear and specific to enable [fol. 101] the Defendant to prepare for trial, and be a bar to another trial on the same charge. In conspiracy it is necessary to set up some overt act. The overt act alleged must be one to accomplish the object of the conspiracy.

Similarly, an indictment for a substantive offense, must state the offense, not barred by statute, in plain, concise terms. Likewise it is unquestionably the law of the State of New York, that every element of the crime must be alleged.

The burden rests upon Petitioner to establish the illegality of the restraint, and evidence should be liberally interpreted in favor of the legality of the demand.

Upon consideration of the evidence before us, voluminous citations, argument of counsel, and conduct of various counsel, we conclude that Petitioner is not substantially charged in the demanding state, and is not therefore, a fugitive subject to extradition, and is illegally restrained of his liberty.

It is therefore ordered that the Writ herein be, and the same is made permanent; and,

It is ordered that said Petitioner be, and he is hereby freed from the restraint complained of on the part of the Sheriff of White Pine County, or the agents named in the Executive Warrant, under such Warrant.

Dated this 19th day of January, 1953.

/s/ Harry M. Watson, District Judge.

[fol. 102] In District Court of White Pine County

Bail Order—December 16, 1952

Appearances:

C. E. Horton, Esq., and Harry E. Claiborne, Esq., Attorneys for applicant. Petitioner appeared in court.

Court convened at 3:45 p. m.

The defendant and applicant for the writ of habeas corpus was present in court in custody of Deputy Sheriff Christine Russell.

It is ordered that the applicant be released on bail of $10,000 until Dec. 22, 1952 at 9 a. m. or to such time as the matter may be continued.

Whereupon the court was recessed.

Approved: Harry M. Watson, District Judge.

In District Court of White Pine County

Order of Continuance—December 22, 1952

Appearances:

C. E. Horton, Esq., Harry Claiborne, Esq., Attorneys for the Petitioner.

Jon R. Collins, Esq., George Dickerson, Esq., Attorneys for the Respondent.

Petition was present in court.

Court convened at 9:45 a. m. as the time set for the hearing of the petition of a permanent writ of habeas corpus.

The petitioner appeared in person with counsel for the hearing.

Attorney Jon Collins submitted to the Court the agreement concurred in by opposing counsel that the matter be continued until Jan. 12, 1953 at 10 a. m.

It is ordered that the hearing on the petition for a writ of habeas corpus of Joseph Stacher, be continued to Jan. 12, 1953 at 10 a. m.

It is further ordered that the petitioner be remanded to bail of $10,000 as previously set.

Whereupon the court was recessed.

Attest: F. D. Oldfield, Clerk, By John Hamlyn, Deputy.

[fol. 103] Clerk's Certificate to foregoing transcript omitted in printing.

[fol. 104] SUPREME COURT OF THE UNITED STATES

ORDER EXTENDING TIME TO FILE PETITION FOR WRIT OF CERTIORARI

Upon consideration of the application of counsel for petitioner(s),

It is ordered that the time for filing petition for writ of certiorari in the above-entitled cause be, and the same is hereby, extended to and including May 8, 1953.

Robert H. Jackson, Associate Justice of the Supreme Court of the United States.

Dated this 15th day of April, 1953.

[fol. 105] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1953

No. 784

STATE OF NEVADA and THE PEOPLE OF THE STATE OF NEW YORK, Petitioners,

vs.

JOSEPH STACHER

ORDER ALLOWING CERTIORARI—Filed June 15, 1953

The petition herein for a writ of certiorari to the Seventh Judicial District Court, in and for the County of White Pine, State of Nevada, is granted, and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.

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FILED
MAY 5 1953
HAROLD B. WILLEY, Clerk

Supreme Court of the United States

OCTOBER TERM, 1952

No. ~~784~~ 61

STATE OF NEVADA AND THE PEOPLE OF THE STATE OF NEW YORK,
Petitioners,

v.

JOSEPH STACHER,
Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WHITE PINE AND BRIEF IN SUPPORT OF PETITION.

STATE OF NEVADA,
Petitioner,

WILLIAM T. MATTHEWS,
Attorney General of Nevada,
Solicitor for the State of Nevada.

THE PEOPLE OF THE STATE OF NEW YORK,
Petitioners,

NATHANIEL L. GOLDSTEIN,
Attorney General of New York,
WENDELL P. BROWN,
Solicitor General of New York,
Solicitors for The People of the State of New York.

Of Counsel:

JACK STREETER,
GEORGE M. DICKERSON,
Special Assistant Attorneys General of Nevada,

PAUL W. WILLIAMS,
Special Assistant Attorney General of New York,

EDWARD L. RYAN,
Assistant Attorney General of New York.

BATAVIA TIMES, LAW PRINTERS,
BATAVIA, N. Y.

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Supreme Court of the United States

OCTOBER TERM, 1952

No. .....

STATE OF NEVADA AND THE PEOPLE OF THE STATE OF NEW YORK,

Petitioners,

v.

JOSEPH STACHER,

Respondent.

PETITION FOR WRIT OF CERTIORARI TO THE SEVENTH JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA IN AND FOR THE COUNTY OF WHITE PINE

To the Honorable Chief Justice and the Associate Justices of the Supreme Court of the United States:

The State of Nevada by William T. Matthews, its Attorney General, and The People of the State of New York by Nathaniel L. Goldstein, Attorney General of the State of New York, respectfully petition for a writ of certiorari to review an order (R. 82) of the Seventh Judicial District Court of the State of Nevada, in and for the County of White Pine, hereinafter referred to as the District Court, rendered January 19, 1953, which made a writ of habeas corpus permanent and freed the respondent, Joseph Stacher, from restraint by either the Sheriff of White Pine County, Nevada, or New York State Agents, under the

Executive Warrant of the Governor of Nevada (R. 10) granted on the requisition of the Governor of New York (R. 10).

The time for filing this petition has been extended to and including May 8th, 1953, by an order granted by Mr. Justice Jackson and dated April 15, 1953.

I

Summary Statement of Matters Involved

Pursuant to a request by the Governor of the State of New York for the extradition of the respondent Joseph Stacher, as a fugitive from justice, on charges of conspiracy, forgery and gambling for which he was under indictment (R. 27) in New York, the Governor of Nevada held a hearing on November 21, 1952, at the Capitol in Carson City, to determine whether he should issue an Executive Warrant for the respondent's arrest. The Governor issued said Warrant (R. 10) on the same day. Also on the same day, the respondent surrendered himself under the Executive Warrant in Las Vegas, located in Clark County, Nevada, where he petitioned the District Court for a writ of habeas corpus. The hearing on this writ was set for November 28, 1952, and the respondent was released on $5,000 bail. A Special Assistant Attorney General of New York and State Troopers from that State went to Las Vegas to attend the hearing. The respondent, however, failed to appear and his bond was forfeited and the writ dismissed (R. 9).

The respondent, Joseph Stacher, thereafter on December 9, 1952, again surrendered himself under the Governor's Warrant, this time in White Pine County, Nevada. He petitioned the District Court for and was granted an alternate writ of habeas corpus (R. 4), and posted $10,000

bail for appearance at a hearing on his application. The hearing was held on January 12, 1953, at which a Special Assistant Attorney General of the State of New York was present and made an attorney of record (R. 82). On January 19, 1953, the Court granted its order (R. 82) making the said writ permanent and assigned as reasons therefor that the respondent had not been substantially charged with a crime in New York and therefore was not a fugitive subject to extradition and was illegally restrained of his liberty (R. 83).

II

Jurisdictional Statement

1. Jurisdiction is invoked under 28 U. S. C., § 1257 (3), which provides that a final judgment by the highest court of a state in which a judgment could be had, may be reviewed by this Court upon writ of certiorari, where there is involved a right or privilege under the Constitution or a statute of the United States.

2. The order (R. 82) sought to be reviewed is a final judgment rendered by the highest court of the State of Nevada in which a decision could be had, inasmuch as no appeal lies in that State from the granting by a District Court of a writ of habeas corpus in an extradition proceeding.

Ex parte Sullivan, 65 Nev. 128, 189 P. 2d 338 (1948).

In such cases, this Court has jurisdiction to review the judgment of a lower State Court where Federal or Constitutional questions are involved.

Woods v. *Nierstheimer*, 328 U. S. 211 (1946).

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3. The rights of the parties depend upon the proper construction and application of the extradition clause in the United States Constitution (Art. IV, § 2, par. 2) as well as the implementing Federal extradition statute (18 U. S. C. § 3182).

South Carolina v. *Bailey*, 289 U. S. 412, 419 (1933).

The extradition statute provides that when the Governor of a state demands a person, as a fugitive from justice, of the Governor of a state to which that person has fled, and produces an authenticated copy of an indictment found in the demanding state charging such person with having committed a felony or other crime, the Governor of the state to which the person had fled shall cause him to be arrested and secured and shall notify the Governor making the demand and shall cause the fugitive to be delivered to the Agent of the demanding Governor if he appears within thirty days.

Petitioners claim a right under Article IV, § 2, par. 2 of the Constitution and under 18 U. S. C., § 3182, namely, the right to extradite the respondent. The granting of a permanent writ of habeas corpus was a denial of this right, which is subject to review by this Court.

South Carolina v. *Bailey, supra*, 289 U. S. 412 (1933);

Drew v. *Thaw*, 235 U. S. 432 (1914).

III

The Questions Presented

1. Did the District Court of the State of Nevada have the right to inquire into the sufficiency of the New York indictment?

2. If such right exists, does the New York indictment substantially charge the respondent with a crime or crimes against the Laws of New York?

IV

Reasons Relied on for Allowance of the Writ of Certiorari

1. The State Court has decided Federal constitutional and statutory questions of substance, relating to the right of extradition, in a way which is plainly at variance with applicable decisions of this Court. Specifically, the Nevada Court in effect made a determination that the New York indictment was insufficient. An identical inquiry into the sufficiency of an indictment was held by this Court to be beyond the constitutionally permissible scope of examination by a Court in habeas corpus proceedings.

Pierce v. *Creecy*, 210 U. S. 387 (1908).

See *Munsey* v. *Clough*, 196 U. S. 364, 373 (1905).

2. Even if an inquiry into the sufficiency of the indictment as a pleading were proper, important rights of petitioners have still been violated by this order. The intent and purpose of the extradition clause in the Constitution (Art. IV, § 2, par. 2) and the Federal extradition statute (18 U. S. C., § 3182) have been thwarted by the judgment of the Nevada Court that the New York indictment did not substantially charge respondent with a crime, whereas, in fact, the counts in the indictment charging the respondent with commission of numerous crimes in New York, substantially in the language of the criminal statutes, are all valid and substantial charges as a matter of law.

Ex parte Reggel, 114 U. S. 642, 650-1 (1885).

3. The questions presented are of great public importance in that this respondent has avoided extradition

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and the Warrant of the Governor of the State of Nevada has been nullified without basis in law or in fact. The precedent which this sets is a dangerous one. This Court has repeatedly said that faithful, vigorous enforcement of the extradition laws is vital to the harmony and welfare of the states.

Appleyard v. *Massachusetts*, 203 U. S. 222, 227-8 (1906);
McNichols v. *Pease*, 207 U. S. 100, 112 (1907);
South Carolina v. *Bailey*, *supra*, 289 U. S. 412, 421 (1933).

WHEREFORE, petitioners pray that a writ of certiorari issue to the Seventh Judicial District Court of the State of Nevada in and for the County of White Pine to the end that the aforesaid errors may be corrected by this Court.

Dated: May 4, 1953.

STATE OF NEVADA,
Petitioner,

WILLIAM T. MATTHEWS,
Attorney General of Nevada,
Solicitor for the State of Nevada.

THE PEOPLE OF THE STATE OF NEW YORK,
Petitioners,

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BRIEF IN SUPPORT OF PETITION

Statement

The factual statement of the matters involved is sufficiently summarized in the petition to obviate repetition here

Jurisdiction

The jurisdiction of this Court also is sufficiently stated, and supported by citations, in the petition. We do not repeat it here.

The Order Sought to be Reviewed

The sole basis for the order (R. 82) of the District Court of Nevada was that the respondent (Stacher) had not been substantially charged with a crime in New York and, therefore, was not a fugitive from justice subject to extradition and was illegally restrained of his liberty. The District Court held (R. 83):

> "Upon consideration of the evidence before us, voluminous citations, argument of counsel, and conduct of various counsel, we conclude that Petitioner is not substantially charged in the demanding state, and is not therefore, a fugitive subject to extradition, but is illegally restrained of his liberty."

The Questions Presented

The decision of the District Court raises two questions for presentation to this Court:

> "1. Did the District Court of the State of Nevada have the right to inquire into the sufficiency of the New York indictment?
>
> "2. If such right exists, does the New York indictment substantially charge the respondent with a crime or crimes against the Laws of the State of New York?"

Outline of Argument

It is the contention of the petitioners that the District Court erred in its determination on both of these questions and, by reason thereof, violated the rights of the petitioners as established by the extradition clause of the Constitution of the United States (Article IV, § 2, ¶ 2) as well as the implementing Federal extradition statute (18 U.S.C. § 3182). It is the further contention of the petitioners that the order of the District Court of the State of Nevada is in conflict with decisions of this Court rendered in interstate extradition proceedings which have come before it.

ARGUMENT

I

The District Court of Nevada was in error in passing upon the sufficiency of the New York indictment.

This precise question has been decided many times by this Court and the rule laid down by the decisions is that it is the province of the demanding State alone to determine whether an offender has been charged with a crime in that State. As was said in *Munsey* v. *Clough*, 196 U. S. 364 (1905), at page 373:

> "The indictment undoubtedly set forth a substantial charge against the plaintiff in error, and the facts therein set forth constituted a felony in the Commonwealth of Massachusetts, as certified by the district attorney. The sufficiency of the indictment, as a matter of technical pleading, will not be inquired into on *habeas corpus*. *Ex parte Reggel*, 114 U. S. 642; *Pearce* v. *Texas*, 155 U. S. 311; *Ex parte Hart*, 59 Fed. Rep. 894.
>
> "If the indictment be for three district offenses (although of the same nature) set out in the three different counts, as is argued by plaintiff in error, it will not be presumed that such an indictment is void under

the laws of Massachusetts, and the question of procedure under the indictment is one for the courts of the State where it was found. The courts of that State would undoubtedly protect her in the enjoyment of all her constitutional rights. These are matters for the trial court of the demanding State, and are not to be inquired of on this writ. * * *"

In *Pierce* v. *Creecy*, 210 U. S. 387 (1908), defendant attempted to attack the indictment against him upon grounds similar to those urged by the respondent in this case. He argued, *inter alia*, that the charge of false swearing was not pleaded with sufficient certainty, that insufficient facts were alleged which were necessarily inconsistent with the alleged false affidavits. Finally, he argued that upon the face of the indictment prosecution was barred by the statute of limitations. Said the Court, in affirming the denial of a writ of habeas corpus, (at pages 403-5):

"All the other objections are appropriate to a demurrer or a motion to quash or in arrest of judgment. They are attacks upon the indictment as a criminal pleading, * * *. If well founded, they show that the indictment is bad. But the Constitution does not require, as an indispensable prerequisite to interstate extradition, that there should be a good indictment, or even an indictment of any kind. * * * The indictment, whether good or bad, as a pleading, unmistakably describes every element of the crime of false swearing, as it is defined in the Texas Penal Code, * * *."

* * *

"This court, in the cases already cited, has said, somewhat vaguely but with as much precision as the subject admits, that the indictment, in order to constitute a sufficient charge of crime to warrant interstate extradition, need show no more than that the accused was substantially charged with crime. This indictment meets and surpasses that standard, and is enough. If more were required it would impose upon courts, in the trial of writs of *habeas corpus*, the duty of a critical examination of the laws of States with whose juri-

prudence and criminal procedure they can have only a general acquaintance. Such a duty would be an intolerable burden, certain to lead to errors in decision irritable to the just pride of the States and fruitful of miscarriages of justice. The duty ought not to be assumed unless it is plainly required by the Constitution, and, in our opinion, there is nothing in the letter or the spirit of that instrument which requires or permits its performance."

In *Drew* v. *Thaw*, 235 U. S. 432 (1914), Mr. Justice Holmes said (at pages 439-40):

"* * * the purpose of the writ is not to substitute the judgment of another tribunal upon the facts or the law of the matter to be tried. * * * The technical sufficiency of the indictment is not open. * * * When, as here, the identity of the person, the fact that he is a fugitive from justice, the demand in due form, the indictment by a grand jury for what it and the Governor of New York allege to be a crime in that State and the reasonable possibility that it may be such, all appear, the constitutionally required surrender is not to be interfered with by the summary process of *habeas corpus* * * *."

See, also, *Biddinger* v. *Commissioner of Police*, 245 U. S. 128, 134-135 (1917).

The rule laid down in the cited cases is applicable here. The District Court of Nevada erred in passing upon the sufficiency of the New York indictment.

II

The New York indictment is valid and sufficient and it substantially charges the Respondent with the commission of crimes under the laws of the State of New York.

The indictment (R. 27) contains twenty-one counts, of which eight counts (Nos. 1, 3, 6, 7, 8, 9, 10 and 11) apply to this respondent and charge him with crimes against the Laws of the State of New York as follows:

First Count (R. 27)—"the crime of CONSPIRACY in violation of Section 580 of the Penal Law."

Third Count (R. 39)—"the crime of OBTAINING THE SIGNATURE OF A PERSON TO A WRITTEN INSTRUMENT WITH INTENT TO CHEAT AND DEFRAUD, designedly, by aid of false pretense in violation of Section 932 of the Penal Law."

Sixth Count (R. 46)—"the crime of FORGERY IN THE THIRD DEGREE, in violation of Paragraph 1 of the first Subdivision of Section 889, of the Penal Law."

Seventh Count (R. 47)—"the crime of FORGERY IN THE THIRD DEGREE, in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law."

Eighth Count (R. 49)—"the crime of FORGERY IN THE THIRD DEGREE, in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law."

Ninth Count (R. 51)—"the crime of FORGERY IN THE THIRD DEGREE in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law."

Tenth Count (R. 52)—"the crime of FORGERY IN THE THIRD DEGREE in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law."

Eleventh Count (R. 54)—"the crime of FORGERY IN THE THIRD DEGREE in violation of Paragraph 4 of the second Subdivision of Section 889 of the Penal Law."

The material provisions of Sections 580, 889 and 932 of the Penal Law of New York are set out in the Appendix to this brief.

An examination of the eight counts of the indictment charging this respondent with crimes reveals a detailed pleading that thoroughly and legally sets out the charges. The indictment fully and fairly acquaints the respondent with the charges against him. It complies fully with the provisions of Section 275 of the New York Code of Criminal Procedure, which provides:

"§ 275. Indictment, what to contain

"The indictment must contain:

"1. The title of the action, specifying the name of the court to which the indictment is presented, and the names of the parties;

"2. A plain and concise statement of the act constituting the crime, without unnecessary repetition."

Although the indictment speaks for itself as to its legality, it is deemed advisable to review briefly respondent's contentions raised in the lower Court.

We do so without in any sense retreating from the legal positions asserted in this brief.

Respondent made the following objections to the indictment:

1. That the indictment must set out in detail the acts and means by which the respondent aided and abetted. We contend that the indictment does set out such details as are required.

The rule in New York is stated in *People* v. *Seldner*, 62 App. Div. 357, 71 N. Y. Supp. 35 (1901), at page 360:

> "This indictment was sufficient to warrant the conviction of appellant as a principal. It was not necessary to plead the evidence which the People claim constituted aiding and abetting the other defendants in the commission of the felony charged against them. The facts constituting the crime were fully stated. The evidence by which the People proposed to connect defendant with it is not set forth, but the facts are stated according to their legal effect. The words 'aided and abetted' and 'concerned in' have a well-defined legal meaning, and as used in this indictment they charge appellant with having counselled, assisted and encouraged the other defendants in the commission of every act constituting the crime. The facts constituting the crime committed by the other defendants having been sufficiently set forth, it was sufficient to charge defendant with having been willfully and feloniously concerned in and with having willfully and feloniously aided them in the commission of that crime. (*People* v. *Bliven*, 112 N. Y. 79; *People* v. *Batterson*, 50 Hun, 44; *People* v. *Bosworth*, 64 id. 72; *People* v. *Fitzgerald*,

156 N. Y. 253, 257; *People* v. *Kief*, 126 id. 661; *People* v. *Willis*, 158 id. 392; *People* v. *Kelly*, 11 App. Div. 495, 496; *People* v. *Peckens*, 153 N. Y. 576, 587.)"

Wide application of the rule in numerous judicatures is indicated by the citations supporting the following annotation in 116 A. L. R. 1104:

> "The rule almost universally adopted is that an indictment of an accessory to a crime need not set forth the specific facts or means by which the alleged accessory procured, aided and abetted the commissions of a crime, * * *."

See, also, *People* v. *Farson*, 218 App. Div. 488, 492, 218 N. Y. Supp. 41 (1926); aff'd, 244 N. Y. 413, 155 N. E. 724 (1927).

2. That in count three (R. 39) the respondent must be charged under Section 130 of the Alcoholic Beverage Control Law of New York, because it is specific legislation, rather than under the general statute, Penal Law of New York, Section 932. In New York the law is to the contrary. In *People* v. *Hines*, 284 N. Y. 93, 105, 29 N. E. 2d 483 (1940), the Court of Appeals of New York held:

> "Also the principle is applicable that the State may proceed under a general statute even though a more specific one is available. A specific statute does not necessarily replace a more general statute, and does not become the exclusive method of prosecution. Authorities in this State and elsewhere confirm this principle. In *People* v. *Bord* (243 N. Y. 595) defendant urged that the existence of a specific statute covering the exact act with which he was charged prevented a prosecution for the felony under the more general statute. This court rejected that argument."

3. That the statute of limitations had run against count one of the indictment (R. 27). Under this count, the respondent is accused of committing the crime of Con-

spiracy, a misdemeanor, in violation of Section 580 of the Penal Law of New York, which provides in part:

"§ 580. Definition and punishment of conspiracy

"If two or more persons conspire:

"1. To commit a crime; or,

* * * * *

"6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws,

"Each of them is guilty of a misdemeanor."

Under this count, the respondent is charged with conspiracy with others (R. 27):

"(a) to commit acts injurious to public morals and for the perversion and obstruction of the due administration of the laws and (b) to commit crimes, to wit, the crimes of violating Sections 664, 665, 881, 889, 970 and 973 of the Penal Law, in that said defendants did unlawfully, knowingly, wilfully and corruptly conspire to commit the crimes of FORGERY IN THE THIRD DEGREE, UTTERING A FORGED INSTRUMENT, BEING COMMON GAMBLERS, MAINTAINING, OWNING AND OPERATING A GAMBLING ESTABLISHMENT, to wit, ARROWHEAD INN, and certain gambling casinos thereto annexed and a part thereof, and MISCONDUCT OF DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES OF CORPORATIONS, to wit, the payment to stockholders of a part of the capital stock of a corporation, the unlawful application of funds of a corporation to the purchase of shares of its own stock, and the knowing receipt of the property of a corporation and, with the intent to defraud, the omission to make a full and true entry thereof in the books and accounts of the corporation."

The count fully sets forth seventeen specifications of the acts constituting part of the Conspiracy (R. 28), and forty-two specifications of overt acts running from July 11, 1928 to July 1, 1952 (R. 31).

Among the crimes which it is charged the respondent conspired to commit, two (Uttering A Forged Instrument, Penal Law of New York, § 881, and Forgery In The Third Degree, Penal Law of New York § 889) are felonies. The others are misdemeanors.

Section 142 of the Code of Criminal Procedure of New York provides:

> "§ 142. Limitation for prosecutions other than murder or kidnapping
>
> "A prosecution for a felony, other than murder or kidnapping, or a prosecution for the crime of conspiracy to commit a felony must be commenced within five years after its commission, except where a less time is prescribed by statute. And a prosecution for all misdemeanors other than a conspiracy to commit a felony must be commenced within two years after its commission."

The law is clear and without exception that the acts of one conspirator bind all the co-conspirators and that the statute does not run from the first overt act, but rather from the last overt act set out in the indictment. (*People* v. *Hines*, *supra*, 284 N. Y. 93, 29 N. E. 2d 483 (1940); *United States v. Greene*, 115 Fed. 343 (1902); *Marino* v. *United States*, 91 F. 2d 691 (1937).) In count one of this indictment, the last overt act set out was on July 1, 1952 (R. 37). It is therefore impossible for respondent to maintain successfully that the statute of limitations had run.

4. That the indictment must allege in the forgery counts therein that respondent was an officer or employee of the organization.

That was the law in New York prior to 1912 (during that year the second portion of Penal Law § 889 was en-

acted) but has since changed as is clearly pointed out in *People* v. *Smith*, 177 App. Div. 152, 163 N. Y. Supp. 283 (1917), aff'd, without opinion, 221 N. Y. 590, 117 N. E. 1080, in the following language (at page 154):

> "The second indictment clearly charges a different crime, in violation of the provisions of the last paragraph of said section 889 of the Penal Law, * * * in that *with intent to defraud the creditors of said firm and to conceal from them and from other persons interested* matters materially affecting the financial condition of the firm the defendant feloniously altered, erased and obliterated an entry in a deposit book of the firm showing an indebtedness from the firm to him. This is clearly a different crime, depending in no manner upon whether the members of the firm consented to such alteration or whether the same was made by an employee of the firm by direction of one of the members." (original emphasis)

Therefore, the counts of forgery against respondent are valid.

We submit that the arguments presented by the respondent here to the Court below have no support in fact or in law.

Conclusion

The District Court of Nevada has followed a line of inquiry not permitted by the Constitution of the United States and the Federal extradition statute. Even if pursuit of such inquiry were permissible, its finding that the New York indictment did not substantially charge the respondent with a crime, is wholly without merit or basis and constitutes a violation of petitioners' constitutional and statutory rights.

The order of the District Court, without basis of law or fact, frustrates the Chief Executives of the States of

Nevada and New York in the exercise of constitutional and statutory powers and duties.

WHEREFORE, it is respectfully submitted that the petition for writ of certiorari be granted.

Dated: May 4, 1953.

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APPENDIX

Penal Law of New York

§ 580. Definition and punishment of conspiracy

If two or more persons conspire:

1. To commit a crime; or,

• • •

6. To commit any act injurious to the public health, to public morals, or to trade or commerce, or for the perversion or obstruction of justice, or of the due administration of the laws,

Each of them is guilty of a misdemeanor.

§ 889. Forgery in third degree

A person who:

1. Being an officer or in the employment of a corporation, association, partnership or individuals falsifies, or unlawfully and corruptly alters, erases, obliterates or destroys any accounts, books of accounts, records, or other writing, belonging to or appertaining to the business of the corporation, association or partnership or individuals; or

• • •

Is guilty of forgery in the third degree.

A person who, with intent to defraud or to conceal any larceny or misappropriation by any person of any money or property:

• • •

4. The altering, erasing, obliterating, or destruction of any account, book of account, record, or writing, or the making of a false entry in an account, statement of finan-

cial condition, or book of accounts, or the willful omission of material entries in such account, statement or books of account, by any person whether by his own hand or the hand of another, if made with intent to defraud creditors or to conceal a crime, or to conceal from creditors or stockholders or other persons interested matters materially affecting the financial condition of any individual, corporation, association, or partnership; or to provide a basis for the obtaining of credit or property by or for such individual, corporation, association, or partnership, shall render such person guilty of forgery in the third degree, within the meaning of this section; but this provision shall not apply to any clerk, bookkeeper, or other employee, who, without personal profit or gain, merely executes the orders of his employer.

§ 932. Obtaining property by false pretenses.

A person who, with intent to cheat or defraud another, designedly, by color or aid of a false token or writing, or other false pretense, obtains the signature of any person to a written instrument, is punishable by imprisonment in a state prison for not more than three years, or in county jail for not more than one year, or by a fine of not more than three times the value of the money or property affected or obtained thereby, or by both such fine and imprisonment.

DECEMBER 7, 1953.

Per Curiam Decisions.

No. 61. NEVADA AND NEW YORK *v.* STACHER. Certiorari, 345 U. S. 991, to the Seventh Judicial District Court of Nevada, in and for the County of White Pine. Argued November 12, 1953. Decided December 7, 1953. *Per Curiam:* Judgment reversed. *Biddinger* v. *Commissioner of Police*, 245 U. S. 128; *Pierce* v. *Creecy*, 210 U. S. 387.

Jack Streeter, Special Assistant Attorney General of Nevada, and *Paul W. Williams*, Special Assistant Attorney General of New York, argued the cause for petitioners. With them on the brief were *William T. Matthews*, Attorney General, and *George M. Dickerson*, Special Assistant Attorney General, for the State of Nevada, and *Nathaniel L. Goldstein*, Attorney General, *Wendell P. Brown*, Solicitor General, and *Edward L. Ryan*, Assistant Attorney General, for the State of New York. *Lemuel B. Schofield* filed an appearance for respondent.